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TREATISE

ON THE

LIEN OF MECHANICS

AND

MATERIAL MEN

IN PENNSYLVANIA:

WITH THE

ACTS OF ASSEMBLY RELATING THERETO;

AND VARIOUS

FORMS OF CLAIMS.

BY

HENRY J. SERGEANT, ESQ.

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PREFACE.

It is hoped that this Treatise, though it may fail to supply the want of a work on the subject of which it treats, may serve as a reference to the decisions under the various acts of assembly relating to the Liens of Mechanics and Material Men. It embraces all the decisions on this subject to which the writer has had access. Being doubtful how far the act of June 1836 agreed with, or supplied the prior acts on the subject, he has thought proper to introduce the latter, as well as the decisions under them. It will be noticed, however, that there is one county, at least, embraced by some of the prior acts, and to which the act of 1836 has not been extended. The acts prior to that of 1836 will, whether supplied by that act or not,

rule a great number of cases which are now pending, and may hereafter arise—the proceedings in which commenced before that act took effect. The act of 1803, which was the first on this subject, and repealed by that of 1806, is also given, together with various Forms of Claims, suitable to Mechanics and Material Men, in conformity to the provisions of the act of 1836.

Philadelphia, October 1839.

CONTENTS.

PART I.

Page

CHAP. I. When will a Lien be created, under the Acts of Assembly relating to the Liens of Mechanics and Material Men, ... 13

CHAP. II. What may be the Subject of this Lien, 19

CHAP. III. When does this Lien commence, . . 23

CHAP. IV. How long will this Lien continue, . 26

CHAP. V. Who are entitled to this Lien, . . 32

CHAP. VI. To what Places does this Lien extend, 35

CHAP. VII. Of Filing Claims, ... 37

CHAP. VIII. When will Mechanics and Material Men be preferred to Mortgagees, Judgment Creditors, and others, ... 44

CHAP. IX. Of Jurisdiction, ... 58

CHAP. X. Of the Remedy to enforce this Lien, . 59

CHAP. XI. Of the Pleadings, ... 67

CHAP. XII. Of Evidence, ... 70

CHAP. XIII. Of Judgment and Execution, . . 71

CHAP. XIV. Of Costs, ... 74

PART II.

FORMS OF CLAIMS.

Page

1. Form of Claim by a House Carpenter against one who is Owner and Contractor, for Work and Materials for a Building, ... 76

2. Form of Claim filed by a House Carpenter against C. D. Owner, and E. F. Contractor, for Work and Materials for a Building, ... 78

3. Form of Claim filed by a Brickmaker against one who is Owner and Contractor, for Materials furnished for one Building, ... 79

4. Form of Claim filed by a Brickmaker against C. D. Owner and E. F. Contractor, for Materials furnished for one Building, ... 80

5. Form of Claim filed by a Brickmaker against one who is Owner and Contractor, for Materials furnished for two or more Buildings, where the amount claimed is equally divided, ... 82

6. Form of Claim filed by a Brickmaker against C. D. Owner and E. F. Contractor, for Materials furnished for two or more Buildings, where the amount claimed is equally divided, ... 83

7. Form of Claim filed by a Brickmaker against C. D. Owner and E. F. Contractor, for Materials furnished for two or more Buildings, where the amount claimed is unequally divided, ... 85

8. Form of Claim filed by a Brickmaker against one who is Owner and Contractor, for Materials furnished for two or more Buildings, where the amount claimed is unequally divided, ... 87

Page

9. Form of Claim filed against one who is Owner and Contractor, by a Bricklayer, for Work, ... 89

10. Form of Claim filed against C. D. Owner, and E. F. Contractor, by a Bricklayer, for Work, . . . 90

11. Form of Claim filed by a Lumberman against one who is Owner and Contractor, for Lumber furnished for one Building, ... 91

12. Form of Claim filed by a Lumberman against C. D. Owner and E. F. Contractor, for Lumber furnished for one Building, ... 92

13. Form of Claim filed by Lumber Merchants (partners) against one who is Owner and Contractor, for Lumber furnished for two or more Buildings, where the amount claimed is equally divided, ... 94

14. Form of Claim filed by Lumbermen (partners) against E. F. Owner or reputed Owner, and G. H. Contractor, for Lumber furnished for two or more Buildings, where the amount claimed is equally divided, . . . 95

15. Form of Claim filed by Lumber Merchants (partners) against one who is Owner and Contractor, for Lumber furnished for two or more Buildings, where the amount claimed is unequally divided, ... 97

16. Form of Claim filed by Lumber Merchants (partners) against E. F. Owner and G. H. Contractor, for Lumber furnished for two or more Buildings, where the amount claimed is unequally divided, ... 99

17. Form of Claim by a Painter and Glazier against one who is Owner and Contractor, for Work and Materials for one Building, ... 101

18. Form of Claim by a Painter and Glazier against C. D. Owner and E. F. Contractor, for Work and Materials for one Building, ... 102

PART III.

ACTS OF ASSEMBLY.

Page

Act of 1st April 1803, ... 104
Act of 17th March 1806, ... 105
Act of 28th March 1808, ... 107
Act of 21st January 1813, ... 108
Act of 1st March 1815, ... 108
Act of 22d March 1817, ... 109
Act of 24th March 1818, ... 110
Act of 7th March 1821, ... 111
Act of 11th April 1825, ... 112
Act of 10th April 1826, ... 112
Act of 16th April 1827, ... 113
Act of 4th February 1830, ... 113
Act of 28th January 1831, ... 114
Act of 30th March 1831, ... 115
Act of 30th March 1831, ... 115
Act of 7th May 1832, ... 117
Act of 11th April 1835, ... 117
Act of 13th April 1835, ... 118
Act of 1st April 1836, ... 119
Act of 16th June 1836, ... 119
Act of 4th April 1837, ... 127
Act of 16th April 1838, ... 128

TABLE OF CASES CITED.

	Page
American Fire Insurance Company *v.* Pringle,	25, 47
Anshutz *v.* M'Clelland,	31, 47, 64
Arthurs, Morgan *v.*	21
Babb *v.* Reed,	52
Barnes *v.* Wright,	22, 42, 64, 65
Bayne *v.* Gaylord,	69
Bean, Leib *v.*	57
Bickel *v.* James,	18
Boudinot, Steinmetz's Executors *v.*	14, 18, 60, 63
Broom, Hampton *v.*	64, 68
Browne *v.* Smith,	20
Buchanan, Kinsley *v.*	49
Burling's Estate,	26
Burt *v.* Kurtz,	43
Cobb *v.* Traquair,	19, 33
Conrad, Harker *v.*	17, 41, 51
Conrad, Hopkins *v.*	30, 71
Cornelius *v.* Uhler,	29, 45
Coryell, Croskey *v.*	52, 53
Croskey *v.* Coryell,	52, 53
Deal, Matlack *v.*	75
Douglas, Gorgas *v.*	31, 32, 39
Ducomb, Lyle *v.*	55, 56
Elliott, Hills *v.*	16, 70

Page

Evans *v.* Springer, ... 67
Evans, Mitchel *v.* 46

Gaylord, Bayne *v.* 69
Gilbert, M'Mullin *v.* 70
Gorgas *v.* Douglas, ... 31, 32, 39
Graham, Hinchman *v.* 16, 17

Hampton *v.* Broom, ... 64, 68
Harker *v.* Conrad, ... 17, 41, 51
Hern *v.* Hopkins, ... 14, 26, 27, 29, 45
Hess, Ridgway v. 66
Hill, Whelan *v.* 68
Hills *v.* Elliott, ... 16, 70
Hinchman *v.* Graham, ... 16, 17
Hinchman *v.* Lybrand, ... 19, 30
Hoover and Myers, Pennock *v.* . . 20, 25, 40, 41, 42, 52
Hopkins *v.* Conrad, ... 30, 71
Hopkins, Hern *v.* 14, 26, 27, 29, 45
Howard *v.* M'Kowen, ... 65, 68
Hoy, Matlack *v.* 73
Hurley *v.* Lybrand, ... 34

James, Bickel *v.* 18

Kinsley *v.* Buchanan, ... 49
Kline *v.* Lewis, ... 51
Klingler, Rogers *v.* 59, 61, 63
Kurtz, Burt *v.* 43

Leib *v.* Bean, ... 57
Lennox, M'Call *v.* 57
Lewis *v.* Morgan, ... 67, 70
Lewis, Kline *v.* 51
Lindall, M'Donald *v.* 21
Linn *v.* Naglee, ... 62, 65, 71
Lybrand, Hinchman *v.* 19, 30

Page

Lybrand, Hurley *v.* 34
Lyle *v.* Ducomb, ... 55, 56

Matlack *v.* Deal, ... 75
Matlack *v.* Hoy, ... 73
Melchior, Wallace *v.* 17
M'Call *v.* Lennox, ... 57
M'Clelland, Anshutz *v.* 31, 47, 64
M'Donald *v.* Lindall, ... 21
M'Ilhenny *v.* Pratt, ... 20
M'Kowen, Howard *v.* 65, 68
M'Laughlin *v.* Smith, ... 75
M'Mullin *v.* Gilbert, ... 70
Mitchel *v.* Evans, ... 46
Morgan *v.* Arthurs, ... 21
Morgan, Lewis *v.* 67, 70

Naglee, Linn *v.* 62, 65, 71

Olympic Theatre, Case of, ... 17, 18, 21, 47

Pennock *v.* Hoover and Myers, . 20, 25, 40, 41, 42, 52
Pratt, M'Ilhenny *v.* 20
Pringle, American Fire Insurance Company *v.* . 25, 47

Reed, Babb *v.* 52
Reese, Sharp *v.* 58
Ridgway *v.* Hess, ... 66
Rogers *v.* Klingler, ... 59, 61, 63

Salter, Savoy *v.* 21, 22, 23
Savoy *v.* Salter, ... 21, 22, 23
Sharp *v.* Reese, ... 58
Smith, Browne *v.* 20
Smith, M'Laughlin *v.* 75
Springer, Evans *v.* 67
Steinmetz's Executors *v.* Boudinot, . . 14, 18, 60, 63

Page

Tearney, Williams *v.* 37, 41
Thompson's (John) Case, ... 32, 49
Thorp, Wademan *v.* 21
Tilford *v.* Wallace, ... 36
Traquair, Cobb *v.* 19, 33
Twelves *v.* Williams, ... 48

Uhler, Cornelius *v.* 29, 45

Vandevender's Case, ... 50

Wademan *v.* Thorp, ... 21
Wallace *v.* Melchior, ... 17
Wallace, Tilford *v.* 36
Werth *v.* Werth, ... 73
Whelan *v.* Hill, ... 68
Williams *v.* Tearney, ... 37, 41
Williams, Twelves *v.* 48
Wright, Barnes *v.* 22, 42, 64, 65

ERRATA.

P. 35, *line* 9. *For* [4]Beaver[11], *read* [3]Beaver[11].
P. 46, *line* 18. *For* 1717 *read* 1715.

PART I.

CHAPTER I.

WHEN WILL A LIEN BE CREATED UNDER THE ACTS OF ASSEMBLY RELATING TO THE LIENS OF MECHANICS AND MATERIAL MEN.

THE act of 1st April 1803 was the first on this subject; and by it every house or other building thereafter constructed and erected within the city of Philadelphia, the district of Southwark and the township of the Northern Liberties, was made subject to the debts contracted by the owner or owners thereof, for or by reason of any work done, or materials found and provided by any brickmaker, bricklayer, stonecutter, &c., &c., or any other person or persons employed in furnishing materials for, or in the erecting and constructing such building, before any other lien which originated subsequent to the commencement of said house or other building.(1)

(1) Pamph. Laws 591.

When this act was made, it was very common for the proprietors of ground to contract with a mechanic for the erection of a house: the proprietor paid a certain sum of money for the building when completed; and the mechanic purchased materials, and built the house on his own credit. Now, in such a case, it is clear that the act of 1803 created no lien; as, in order to create a lien under that act, it was necessary that the debt should have been contracted by the owner of the building. This was found to bear hard in some instances on persons who had furnished materials, or done work on a house; and therefore by a subsequent act, that of 17th March 1806, the lien was extended to all cases of work done, or materials furnished for a building, whether on the credit of the owner or not.(1)

Under these laws the lien existed for two years from the commencement of the building, whether an action had been instituted or a claim filed, or not: and if either of these acts were performed within six months after the work was finished or materials furnished, the lien became indefinite.(2) Under the act of 28th March 1808 the lien also con-

(1) Steinmetz's Executors *v.* Boudinot, 3 S. & R. 541.
(2) Hern *v.* Hopkins, 13 S. & R. 269.

tinued for two years, as before, from the commencement of the building, whether a claim had been filed or not; but could only become indefinite by filing a claim within the six months aforesaid. After the act of 30th March 1831 the lien still existed for two years from the commencement of the building, whether a claim had been filed or not: but the act of filing a claim within the six months from the time of finishing the work or furnishing the materials, instead of making the lien indefinite as before, extended it only to five years from the time of filing—beyond which period, a *scire facias* within these five years alone could continue it.(1) The act of 16th June 1836 has altered the time during which the lien shall continue without filing a claim, or any other act on the part of the mechanic or the material man. The fourteenth section of that act directs that every such debt shall be a lien as aforesaid for the space of six months after the work finished or materials furnished, although no claim shall have been filed therefor; but requires a claim to be filed in order to extend the lien beyond that time.(2)

In order to constitute a lien, the materials

(1) Pamph. Laws 242. (2) Pamph. Laws 695.

must have been furnished to the credit of the particular building against which the lien has been entered, and such must have been the understanding at the time.(1) A charge to the architect generally in the books of the material man will not support a claim on a particular building, if the materials were not expressly furnished for it, notwithstanding they were used in its construction.(1) The charges must be made in such a manner, that the owner, if he applies to the material man before he pays the architect, may be able to discover the liability of his house.(1) If a lumber merchant purchases on credit one hundred thousand feet of boards, to sell and make profit, and changes his intention, and erects two or three houses, and uses half of the boards therein, it seems his creditor for this lumber has no lien on those houses.(1)

But, though materials used in the construction of a building will not support a claim, unless they were expressly furnished for it, still when they are expressly furnished for it, though they are not actually used in its construction, they constitute a lien on it, if there has been no fraud or collusion on the part of the material men.(2)

(1) Hills *v.* Elliott, 16 S. & R. 56.
(2) Hinchman *v.* Graham, 2 S. & R. 170.

As if lumber furnished for a building be afterwards sold by the builder, the lumber merchant has a lien, unless he were privy to the sale and consented to it.(1) So, though the lumber is applied in a manner not necessary or usual.(2) It *seems* that a lumber merchant has a lien for lumber furnished to make shelves for a vault which formed part of the original plan of a building.(2)

As to the *time* of furnishing materials: when they are furnished after the building is completed, they do not create a lien on it;(3) but when they are furnished previous to the commencement of a building, with a view to their being used in its erection and construction, it is otherwise.(3)

As to the *place* of furnishing materials, it has been decided that there is no distinction between materials furnished at or near a building and materials furnished at a distance from it, provided the delivery at a distance be in the usual course of business.(4) The act of assembly makes no mention of the place of delivery. The delivery at one place or another is no further important than

(1) Wallace *v.* Melchior, 2 Browne 104.
(2) Harker *v.* Conrad, 12 S. & R. 301.
(3) Case of the Olympic Theatre, 2 Browne 275.
(4) Hinchman *v.* Graham, 2 S. & R. 170.

as it furnishes evidence of the purpose for which the materials were sold.(1)

The act of repairing a house or furnishing materials for that purpose creates no lien: though it would be otherwise where the principal part of a building is torn down and rebuilt.(2)

It was held under the act of 1803, that no lien was acquired where materials were furnished by the orders of a person who had entered into articles of agreement with the owner of the land for the purchase of the land, and was erecting the building on it, although such agreement was unknown to the plaintiff, who furnished bricks for the building, and the defendant was the ostensible owner of the ground and building :(3) but by a late decision an equitable vendee of a lot of ground who has not paid the purchase money, by building upon it, subjects it to the lien of mechanics and material men; and if sold on such lien, the sheriff's deed vests in the purchaser a good title, against which the vendor cannot recover in ejectment upon his legal title.(4)

(1) Hinchman *v.* Graham, 2 S. & R. 170.
(2) Case of the Olympic Theatre, 2 Browne 275.
(3) Steinmetz's Executors *v.* Boudinot, 3 S. & R. 541.
(4) Bickel *v.* James, 7 Watts 9.

It is not necessary, to constitute a lien, that the demand of the mechanic or material man should be in money. A person who, on furnishing bricks for a building, agreed to be paid part in cash, and "the balance in lumber at fair prices, whenever called for, out of S.'s lumber yard," and accepted the guarantee of S. for the performance of the contract, was held not to have lost his lien upon the building, under the act of 1806.(1) In that case it was said, that the district court held in Cobb *v.* Traquair, March term 1819, that a contract to pay in stone work was not within the lien act.

CHAPTER II.

WHAT MAY BE THE SUBJECT OF THIS LIEN.

It may be made a question whether, by a literal construction of the act of 1806, the lien can be extended beyond the ground actually covered by the house or building; because, by the words of the act, it is the house or building that is made subject to the

(1) Hinchman *v.* Lybrand, 14 S. & R. 33.

payment of the debt contracted in its erection and construction, and no mention is made of the land or ground on which it stands. It is therefore only by a liberal, or, more properly speaking, a reasonable construction of that act, that the lien given by it can be made to embrace any land not covered by the building. The intention of that act, however, is fully satisfied by extending the lien beyond the ground covered by the building to as much more as may be necessary for the convenient occupation and enjoyment of it, according to the intention and design of the owner at the time of its commencement.(1) It was held that the lot on which a building was erected might be sold with the building under a lien upon the latter.(2) A court was laid open, upon each side of which certain houses were erected: it was held that this court, as a necessary appendage to the houses, was subject to a lien upon one of them; as by the closing of the court the tenants would have no means of passing to and fro from their dwellings, and their enjoyment of them would have been destroyed.(3)

It seems that, under the act of 1806 and

(1) Pennock *v.* Hoover & Myers, 5 Rawle 291.
(2) Browne *v.* Smith, 2 Browne 229 (note).
(3) M'Ilhenny *v.* Pratt, D. C. Phil., Jan. 1815; 1 Fr. J. 214.

its supplements, the lien must correspond with the claim filed: and that where a claim is filed against a building and the lot on which it stands, without more, the lien does not extend to the adjoining lot as appurtenant to the building.(1)

Whatever is necessary for the enjoyment of the inheritance is the subject of a lien. Thus, in a theatre, the permanent stage is subject to a lien on the former, but the moving scenery and flying stages are not.(2) The engine by which a steam saw-mill is propelled is part of the building, and subject to the mechanic's lien upon the mill.(3) So are burr millstones, furnished like any other part of the machinery.(4)

The lien given by the act of 1806 to mechanics and material men is *in rem* and independent of any contract with the owner; and will therefore bind the whole estate of the building and lot, as against remainder men and reversioners, though the building may have been erected at the instance of a mere tenant for life.(5) Thus A, *cestui que*

(1) M'Donald *v.* Lindall, 3 Rawle 492.
(2) Case of the Olympic Theatre, 2 Browne 275.
(3) Morgan *v.* Arthurs, 3 Watts 140.
(4) Wademan *v.* Thorp, 5 Watts 115.
(5) Savoy *v.* Salter & Jones, 2 Rawle 343.

trust, tenant for life under a postnuptial marriage settlement, erected a building during her coverture, against which a person who had furnished the bricks for it filed a claim under the act of 1806. Upon this claim a *scire facias* was issued against A, and B her husband, who was entitled to a contingent remainder for life under the settlement, and C, who was trustee for A under the settlement, and those in remainder and reversion. A, B and C appeared to the *scire facias* and pleaded to issue; but before the trial A died, and B, her husband, became tenant for life under the settlement. It was held, that notwithstanding B became entitled in remainder upon the death of A, the lien created upon the building by filing the claim continued to bind against the remainder men and reversioners, and was not confined to the life interest of A, who erected the building.(1)

The act of 30th March 1831 directs nothing further on this subject. The act of 16th June 1836, in its second section, directs

(1) Savoy *v.* Salter & Jones, 2 Rawle 343. In the case of Barnes *v.* Wright, 2 Whart. 193, the court intimated that the question involved in the case of Savoy *v.* Salter (here cited) was not to be considered as definitively settled; and that when a proper case arose, they would reconsider their decision in that case.

that "the lien of such debt shall extend to the ground covered by such building, and to so much other ground immediately adjacent thereto, and belonging in like manner to the owner of such building, as may be necessary for the ordinary and useful purposes of such building, the quantity and boundaries whereof are to be determined" according to the subsequent sections of that act.(1)

CHAPTER III.

WHEN DOES THIS LIEN COMMENCE.

By the terms of the act of 1806 the liens thereby given to mechanics and material men are made to commence expressly from the commencement of the building of the houses to which they have contributed labour or materials. It is of no importance that the materials should be furnished, or the labour performed, throughout the subsequent stages of the work, at the instance of the same person by whose direction the houses were begun. It is not the commencement of the right of ownership or claim to the property, nor the

(1) Pamph. Laws 695.

time at which such right may be first exercised, in contracting for materials and with mechanics, for the purpose of continuing the building, that is to fix and regulate the commencement of the liens on behalf of those furnishing the materials and performing the work; nor is it the time of furnishing the materials, or the time of commencing or finishing the work, but the time of commencing the building of the house, that gives date to the lien. Now, in point of fact, as long as the design or use for which the house is intended shall continue to be the same, a change of ownership, after the building of it has been commenced, does not, and in the very nature of the thing itself cannot, change the commencement of the building of the house: that must still continue to be the same, notwithstanding the right of property in the ground and the house begun upon it shall have been changed subsequently, and passed through twenty or more different hands. Neither is it easy to conceive how a change made in the plan of the house, after it has been commenced, by enlarging or contracting, or in any other respect changing the plan of it, as long as the original design of its character is retained, can with propriety be said to change or give a new commence-

ment to the building of it. The commencement of a building is the first labour done on the ground which is made the foundation of the building, and to form part of the work suitable and necessary for its construction.(1)

It was held, in a case where a building was sold in an unfinished state, and a mortgage given to secure the purchase money, and the vendee went on with the building, that the time of commencement was not altered by that change of ownership; and that the debts of the workmen and material men, notwithstanding they were contracted after the mortgage was recorded, were entitled to a preference over it.(2)

There may be cases in which the beginning of the period mentioned in the acts might not be confined to the actual commencement of a building. Suppose, for instance, a warehouse should be originally built and finished, and, after remaining some time in this situation, should be converted into a dwellinghouse: there the new work might be considered as a new building, and ought

(1) Pennock *v.* Hoover & Myers, 5 Rawle 291.—Per Kennedy, J.

(2) American Fire Insurance Company *v.* Pringle, 2 S. & R. 138.

not to be connected with the first part of the building, so as to give a lien from the original commencement.(1) Where a building, partly brick and partly frame, after undergoing repairs, was removed, and after its removal a cellar was dug under it and walled up, and a new chimney built, and the house partly weather-boarded and plastered, it was held that it was a building "erected and constructed" within the intent of the act; and that the mechanics and material men engaged in repairing it had a lien upon it from the commencement of the repairs.(2)

The act of 1831 did not change the time of commencement of this lien; and it may be inferred from the tenth section of the act of June 1836 that it still continues the same.

CHAPTER IV.

HOW LONG WILL THIS LIEN CONTINUE.

UNDER the laws of 1803 and 1806 the lien of mechanics and material men for work done or materials furnished in the erection or con-

(1) Hern v. Hopkins, 13 S. & R. 269.
(2) Burling's Estate, 1 Ashmead 377.

struction of a building, continued for two years after the commencement of the building, whether an action had been instituted or a claim filed or not. Either of these acts performed within six months after the work finished, or materials furnished, made the lien indefinite.(1) The act of 1808 changed it in this respect: inasmuch as it made the filing a claim within these six months requisite to continue the lien beyond the two years from the commencement of the building. Under the act of 1831 the lien still existed for these two years, independently of any act on the part of the mechanic or material man: but the act of filing a claim within six months after the work finished, or materials furnished, merely continued the lien for the term of five years from the time of filing, instead of making it indefinite as before. Under this act a *scire facias* was requisite to continue the lien beyond the expiration of these five years. By the act of 16th June 1836 the lien continues for six months after the work shall have been finished or materials furnished, although no claim shall have been filed therefor. A claim filed at or before the expiration of the said

(1) Hern v. Hopkins, 13 S. & R. 269.

period of six months extends the lien for five years from the time of filing; and a *scire facias* issued within these five years continues it for another period of five years, and so on, unless the lien be satisfied or extinguished by sheriff's sale, or otherwise according to law.(1)

Under this act (1836) the time for which the lien *continues*, independently of any act on the part of the mechanic or material man (which has been altered by that act to six months instead of two years) dates from the completion of the work or time of materials furnished; whereas, by the prior acts, it dated from the commencement of the building. The lien itself still *commences* with the building as before.

Under the acts of 1806 and 1808 a claimant who did not file his claim or institute a suit within six months after the building upon which his lien existed was finished, or the materials for it furnished, although he had sued and recovered judgment, or had taken out a *scire facias* and recovered judgment upon it within two years from the commencement of the building, lost his lien at the expiration of the two years aforesaid, not-

(1) Pamph. Laws 695.

withstanding a sale during that time by the owner to another person, unless he had sued out execution and obtained a sale, or a judicial sale had been otherwise effected within these two years.(1) It was held also, that the claimant, where he had filed no claim, nor commenced any suit within six months from the completion of the work, but had instituted a suit and recovered a judgment within the two years above mentioned, gained no preference over the general judgment creditors, the building and lot not having been sold until after the expiration of the said two years. But if the claimant had obtained a sale within this time he would have saved his preference.(2) The liability of the premises, even in the hands of their owner, ceased after the expiration of these two years, where the claim was not filed within six months after the work finished or the materials furnished; and the lien being gone, the remedy expired with it.

A person who, on furnishing bricks for the erection of a building, agreed to be paid part in cash, and the "balance in lumber at fair prices, whenever called for, out of A's lumber

(1) Hern *v.* Hopkins, 13 S. & R. 269.
(2) Cornelius *v.* Uhler, 2 Browne 229.

yard," and accepted the guarantee of A for the performance of the contract, was held not to have lost his lien given by the act of 1806.(1) Where a person who is erecting a building, after having procured from a lumber merchant a certain quantity of lumber, becomes the owner of a note payable in lumber by the same lumber merchant, to a greater amount than the lumber furnished, and afterwards more is furnished, exceeding in price the amount of the note, and a claim is filed under the mechanic's lien law for the whole, the claim is *pro tanto* extinguished by the note; and the builder and the lumber merchant cannot afterwards agree to apply the note to the credit of another building, subsequently erected by the same person, against which the lumber merchant has neglected to file a claim in due time, to the prejudice of a third person, who has purchased the first house after the commencement of the second.(2)

Where there are several mechanic's liens filed against the same house, a proceeding and sale by the sheriff, upon any one of them, divests the lien of all, and the purchaser will

(1) Hinchman v. Lybrand, 14 S. & R. 32.
(2) Hopkins v. Conrad, 2 Rawle 316.

hold the property discharged of the incumbrances; and the proceeds of such sale will be divided *pro rata* among such lien creditors.(1)

It was made a question in the case of Gorgas *v.* Douglas, 6 S. & R. 512, whether a subsequent judgment creditor could sell a property liable to mechanic's liens, so as to discharge it therefrom. The supreme court gave no opinion on that point. The court below said, "The act of 1806 does not prohibit, but contemplates a sale of the premises by any creditor, and a distribution of the money *pro rata*; but prefers the lien of the material men, &c. before other liens originating subsequent to the commencement of the building. If a judgment creditor could not sell, then the property could not be sold but under a claim by a material man, carpenter, &c.: and the property might be wasted, and all the creditors injured, while controversies about the claims of the workmen were pending. No injury or inconvenience can be sustained by permitting any creditors to take in execution and sell the premises." The court below there decided that a sheriff's sale, un-

(1) Anshutz *v.* M'Clelland, 5 Watts 487; Gorgas *v.* Douglas, 6 S. & R. 512.

der a judgment and execution against the property, discharged it from all claim by the material men.(1)

It was held that the lien of mechanics and material men was not extinguished by the acceptance of a bond from the owner of the building, and the entering up judgment upon it, in pursuance of a warrant of attorney which accompanied it, the claim having been duly filed.(2) Neither will a judgment destroy their lien.(2)

CHAPTER V.

WHO ARE ENTITLED TO THIS LIEN.

THE benefits of the act of 17th March 1806 were thereby extended to brickmakers, bricklayers, stonecutters, masons, lime merchants, carpenters, painters and glaziers, ironmongers, blacksmiths, plasterers and lumber merchants, or any other person or persons employed in furnishing materials for or in the erecting and constructing any house or other

(1) Gorgas *v.* Douglas, 6 S. & R. 512.
(2) Thompson's Case, 2 Browne 297.

building, &c., &c.(1) The provisions of this act, and of the second section of its supplement, (the act of 1808) were extended by the act of 24th March 1818 to any person or persons furnishing curbstone for the pavement of any house or other building erected within the meaning of the said act:(2) and the provisions of prior acts are extended to plumbers and persons furnishing curbstone for the pavement of any house or other building within the city and county of Philadelphia, by the act of 21st January 1831.(3)

The persons or description of persons enumerated in the act of 1806 are not alone entitled to the remedies provided therein: but any person, without distinction of trade, employed in furnishing materials for or in erecting or constructing any house or other building, is within the meaning of that act.(4) A person who had furnished bricks for a building was held to be entitled to a lien upon it, although he was not a brickmaker by trade.(4) Journeymen mechanics working under the original contractor were held to have no lien on a building:(5) nor

(1) 4 Smith's Laws 300. (2) 7 Smith's Laws 119.
(3) Pamph. Laws 36.
(4) Savoy *v.* Salter & Jones, 2 Rawle 343.
(5) Cobb *v.* Traquair, D. C. Phil., Dec. 1819; 1 Fr. J. 97.

had the paper stainer or paper hanger under the act of 1806.(1) But it seems that the persons who dig the cellars of a building are entitled to a lien upon it.(2)

The act of 16th June 1836 creates the lien "for the payment of all debts contracted for work done, or materials furnished for or about the erection or construction" of the there mentioned buildings: and in its twenty-ninth section extends the lien therein before given, to plumbers and persons furnishing curbstone for the pavement of any building within the city and county of Philadelphia.(3)

The thirty-fourth section of the act of 16th April 1838 extends the provisions of the act of 16th June 1836 to wharf builders, and all persons concerned in the making or construction of the same.(4)

(1) Hurley *v.* Lybrand, 1 Fr. J. 97.
(2) 1 Fr. J. 96.
(3) Pamph. Laws 695.
(4) Pamph. Laws 626.

CHAPTER VI.

TO WHAT PLACES DOES THIS LIEN EXTEND.

THE act of 16th June 1836 extends its provisions to the several counties of Pennsylvania embraced by the act of 17th March 1806, and its supplements.(1) The counties to which the latter acts extended at the time of passing the former act were—Alleghany[11], Armstrong[8], Beaver[11], Bedford[8], Berks[5], Bucks[4], Butler[9], Cambria[8], Centre[6], Chester[9], Clearfield[6], Columbia[3], Crawford[6], Cumberland[3], Dauphin[3], Delaware[4], Erie[5], Franklin[2], Huntingdon[11], Indiana[6], Juniata[10], Lancaster[12], Lebanon[3], Luzerne[4], Lycoming[6], Mercer[11], Mifflin[4], Montgomery[2], Northumberland[3], Perry[9], Philadelphia[1], Schuylkill[5], Somerset[5], Susquehannah[12], Tioga[8], Union[7], Venango[5], Warren[10], Washington[11] and York[2].

(1) Pamph. Laws 695.

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1 Act of 17th March 1806.
2 Act of 22d March 1817.
3 Act of 24th March 1818.
4 Act of 7th March 1821.
5 Act of 11th April 1825.
6 Act of 10th April 1826.
7 Act of 16th April 1827.
8 Act of 30th March 1831.
9 Act of 7th May 1832.
10 Act of 11th April 1835.
11 Act of 13th April 1835.
12 Act of 1st April 1836.

They also extended to the borough of Easton[13] in Northampton county.(1)

When an act of assembly extended the lien law to the town of Lawrenceville, and "all other towns and villages that now are or may be laid out within ten miles of the line of the city of Pittsburgh," it was held that under its provisions a lien for work and materials did not attach on a building erected "on an eminence between the Pittsburgh road and the town of Lawrenceville," although there was a collection of houses at the place; which, however, did not possess a name as a town or village.(2)

The twenty-eighth section of the act of June 1836 extends the provisions of that act to the county of Lehigh.

The nineteenth section of the act of 16th April 1838 extends the provisions of the act of 17th March 1806, and of its supplement passed 28th March 1808, to the county of Bradford.(3)

(1) Stroud's Purd. 683.
(2) Tilford *v.* Wallace, 3 Watts 141.
(3) Pamph. Laws 626.

[13] Act of 4th February 1830.

CHAPTER VII.

OF FILING CLAIMS.

PUBLIC convenience, where alienations are so frequent as they are in Pennsylvania, required notice in some public office within a reasonable time after the creation of the lien, to which those who gave credit, or became purchasers, might have access, and the means of information afforded.(1) Hence the act of 1803 first, and afterwards the act of 1806, made the instituting an action or filing a claim in the office of the prothonotary of the court within six months after performing the work or furnishing the materials, requisite in order to continue the lien given by them beyond the two years from the commencement of the building.(1) Even the instituting of an action furnishes no notice in fact, for it is not indexed in the judgment docket, and if the materials were furnished to a contractor and not the owner of a building, the suit might utterly escape search; but when a lien is filed the practice is to state the name of

(1) Williams *v.* Tearney, 8 S. & R. 58.

the owner as well as of the contractor in the claim, and the name of the former appears in the judgment index. This is not required by the act of 1806, but seems to be by that of 1808; for the *scire facias* therein given is directed to issue against the owner as well as the debtor, and should be warranted by the record.(1) This claim is now, by the act of June 1836, required to set forth the name of the owner or reputed owner of the building, and also that of the contractor, architect or builder, where the contract of the claimant is made with such contractor, architect or builder.

This subject embraces, viz.:

1. The manner of filing claims.
2. The time of filing them.

I. THE MANNER OF FILING CLAIMS.

Under the act of 1806 it was held that a joint claim could not be filed for materials furnished for the erection of several houses owned by different persons, though the houses joined each other: that such a claim could create no lien affecting all the houses jointly and making each house liable for the whole;

(1) 2 Troub. & Haly's Prac. 293.

and that filing such claim was a void act.(1) Nor in case of a *scire facias* brought on such joint claim could it be helped by proving on the trial what materials were furnished to each house; for this would be contrary to the demand as set forth in the *scire facias*, and to the claim filed of record.(1) The act directs that "*all and every dwelling house or other building* shall be subject to the payment of the debts contracted for or by reason of any work done or materials found," &c. &c.: from these words it would seem that *each house* was to be subject to the payment of *its own* debts. This does not authorize a joint lien against several houses: nor is there any weight in the words of the proviso, which declares, "that no such debt shall remain a lien on the *said houses or other buildings* longer than two years, unless, &c. &c. The words "said houses or other buildings" are general expressions, referring to houses and buildings, as the objects before mentioned, on which mechanics, &c. might have a lien.(1)

In the case above referred to the court declined giving any opinion, whether a joint claim could be supported in the case of several houses owned by *one* person. But it has

(1) Gorgas v. Douglas, 6 S. & R. 512.

since been decided, under the acts of 1806 and 1808, that a mechanic or material man, doing work in or furnishing materials for the construction of two or more contiguous houses belonging to the *same* person, under a general request, without any specific contract for each house separately, may either file his claim for the amount against *all* the houses *jointly*, or he may apportion it among them according to the value or price of the materials or work, and file a separate claim accordingly.(1)

In a case where eighteen buildings were erected, a claim against eight houses, without designating them, was considered void for uncertainty, and could not continue the lien beyond the two years; and where a claim was so filed, it was wrong to apportion it among all the houses.(1a) Under the act of 1806 it was held, that in the case of a joint lien each building was liable for the whole amount thereof, and that no part of the proceeds of any one of the buildings could be applied to a subsequent incumbrance, so long as the joint lien remained unsatisfied.(1) Under that act, where a mechanic filed four claims, three of which were jointly charged,

(1) Pennock v. Hoover & Myers, 5 Rawle 291.

each on three of the houses, and a fourth on four of the houses, and each claim embraced houses different from those charged in every other—it was held, that each claim should have been separately charged on the proceeds of the houses specified in it, and not the aggregate charged as one entire claim jointly on the thirteen houses embraced in the four several claims.(1)

A claim filed under the act of 1806, "against A and B, the owners or reputed owners of a three-storied brick house, situate on the south side of Walnut street, between Eleventh and Twelfth streets, in the city of Philadelphia, and against all other person or persons, owners or possessors of the said building," was held to be sufficiently certain.(2) It was also decided that taking a bond with warrant of attorney, and entering judgment upon it, was not equivalent to the institution of an action or filing a claim, within either the letter or meaning of that act, as it gives no notice to purchasers or others.(3)

The act of 30th March 1831 provides that it shall and may be lawful for the person *so finding and providing materials* as aforesaid, for

(1) Pennock *v.* Hoover & Myers, 5 Rawle 291.
(2) Harker *v.* Conrad, 12 S. & R. 301.
(3) Williams *v.* Tearney, 8 S. & R. 58.

two or more adjoining houses and other buildings built by the same person, owner of the same, and debtor for the said materials, to file with his claim thereof an apportionment of the amount of the same among the said houses and other buildings: and each of the said houses and other buildings shall be subject to the payment of its said apportioned share of the debt contracted.(1) Under this act it was held, that where a claim has been apportioned among several buildings, one *scire facias* against all for the whole amount cannot be maintained.(2)

The act of 16th June 1836, like the prior act of 30th March 1831, gives this privilege of designation to persons furnishing *materials*, but makes no mention of persons claiming for *work* done. It may be made a question whether this privilege now extends to the latter, although it has been said that they possessed this privilege of designation under the acts prior to 1831.(3)

The thirteenth section of the act of 16th June 1836 provides, that "in every case in which one claim *for materials* shall be filed by the person preferring the same, against

(1) Pamph. Laws 242.
(2) Barnes *v.* Wright, 2 Whart. 193.
(3) Pennock *v.* Hoover & Myers, 5 Rawle 291.

two or more buildings owned by the same person, the person filing such joint claim shall at the same time designate the amount which he claims to be due to him on each of such buildings; otherwise such claim shall be postponed to other lien creditors, and the lien of such claimant shall not extend beyond the amount so designated as against other creditors having liens by judgment, mortgage or otherwise."(1) Under this it seems that a person filing a claim for materials against two or more buildings owned by the same person, must designate the amount he claims on each, otherwise he will be postponed to other creditors; but that where he does thus designate, he cannot recover beyond the amount designated, unless there is a surplus after other creditors are satisfied.

II. TIME OF FILING CLAIMS.

By the acts of 1803 and 1806 the claim was directed to be filed within six months after the work done or materials furnished; which is also required by the acts of 1808, 1831 and 1836. A claim may be filed after a judicial sale of the premises, if within time in other respects.(2)

(1) Pamph. Laws 695.
(2) Burt v. Kurtz, 5 Rawle 246.

CHAPTER VIII.

WHEN WILL MECHANICS AND MATERIAL MEN BE PREFERRED TO MORTGAGEES, JUDGMENT CREDITORS AND OTHERS.

THE act of 1806 provides "that all and every dwellinghouse and other building, &c. shall be subject to the payment of the debts contracted for or by reason of any work done or materials found or provided by any brickmaker, &c. &c. &c., *before any other lien* which *originated subsequent* to the *commencement* of the said house or other building."(1) The act of 1836, section ten, provides also, that "the lien for work and materials, as aforesaid, shall be *preferred* to *every other lien* or *incumbrance* which *attached* upon such building and ground, or either of them, *subsequently* to the *commencement* of such building."(2)

Under the former act, a claimant who had filed no claim nor instituted an action within six months from the time of performing the work or furnishing the materials, but had ob-

(1) 4 Smith's Laws 300. (2) Pamph. Laws 695.

tained judgment within two years from the commencement of the building, gained no preference over creditors who had obtained prior judgments, where the building was not sold until after the expiration of these two years; but if it had been sold within that time, he would have acquired this preference.(1) In the former case his lien was gone, and his judgment reduced to a footing with other judgments, and ranked with them according to their respective dates. During the two years above mentioned prior judgments (subsequent to the commencement of the building) would have been excluded by virtue of the lien created by the act, but not in consequence of the subsequent judgments obtained by the lien creditor. He might during the two years have made his lien perpetual by pursuing the directions of the act; but when he neglects so to do, there is no reason why he should be preferred to others who have obtained judgments prior to his.(2)

It was held, when the act of 28th May 1715 was in force,(3) (by which act mortgages took effect from their date, when re-

(1) Hern *v.* Hopkins, 13 S. & R. 269; Cornelius *v.* Uhler, 2 Browne 229.

(2) Cornelius *v.* Uhler, 2 Browne 229.

(3) 1 Smith 94.

corded within six months from that time) where a mortgage was given upon a lot, upon which a building was afterwards commenced within six months from the date of the mortgage, and the mortgage was recorded after the six months had expired, and the property was sold by the sheriff within two years from the commencement of the building—that the liens of the mechanics under the act of 1806 were entitled to a preference over the mortgage: the court being of opinion that, notwithstanding the mortgage existed as a lien *before* the commencement of the building, yet it *ceased* to be a lien at the expiration of six months from its date, because it had not been recorded within that time; and that this non-compliance with the act of 1717 referred back so as to make the lien of the mortgage void *ab initio*, and to revive against it the priority of the lien creditors.(1) But where there were two adjacent lots upon which a mortgage existed, covering both, and upon the second lot a building was erected, the court directed the mortgage to be

(1) Mitchel *v.* Evans, 2 Browne 329. *Quære.* If the building had been judicially sold within the six months from the date of the mortgage, but before the mortgage was recorded—which would be entitled to a preference, the mortgagee or the mechanics?

paid out of the proceeds of the first lot, leaving the value of the building on the second lot for the lien creditors: upon the principle in equity, that a person having two funds shall not by his choice disappoint another having one only.(1) An unfinished house in the city of Philadelphia was sold and a mortgage given to secure the purchase money, which was immediately recorded; the vendee then went on with the building: it was held that the debts of the workmen and others who furnished materials for the building after the mortgage was recorded should be preferred to the mortgage: it being considered that their liens related back to the commencement of the building.(2)

Where there are various liens filed in conformity to the acts of assembly by different mechanics and lumber merchants against the same house for work done and lumber furnished in its construction, a proceeding and sale of the house upon any one of them will release it from the whole; and the purchaser at sheriff's sale will hold it entirely discharged therefrom.(3) But where, the plaintiffs hold-

(1) Case of the Olympic Theatre, 2 Browne 275.

(2) American Fire Insurance Company *v.* Pringle, 2 S. & R. 138.

(3) Anshutz *v.* M'Clelland, 5 Watts 48.

ing liens for materials furnished for the erection of certain buildings, and a sale of the buildings being about to take place under an execution, an agreement was entered into between the plaintiffs and A, who had previously purchased the buildings subject to the liens, and whose object was to obtain a sheriff's title, that the sheriff's sale should not prejudice the plaintiffs' liens, and that A should either bid up the property, so as to pay the liens in full, or buy the property and pay the liens, and the property was purchased by A, who shortly afterwards made a general assignment of his property for the payment of creditors with certain preferences, including therein the plaintiffs: it was held that the assignees were bound by the agreement entered into between A and the plaintiffs, and that their liens continued notwithstanding the sheriff's sale and assignment.(1)

A judgment, although it might drown a simple contract debt, being a higher security than the latter, yet if it is obtained by a lien creditor for work done or materials furnished, does not destroy his lien: it still remains, and will defeat a judgment prior to the judgment of the lien creditor, if the former were

(1) Twelves *v.* Williams, 3 Whart. 485.

obtained after the commencement of the building. A bond, also being an inferior security to the lien, will not extinguish the latter.(1) Where a bond was given by the owner of a building to A, who had furnished materials for it, and judgment was entered upon the bond, and the claim was duly filed within the six months prescribed, and the building sold within the two years, it was held, that A was entitled to be paid the amount of his claim in preference to a general judgment creditor, whose judgment bore date prior to that of A, but subsequent to the commencement of the building.(1) Neither is the acceptance of a note a relinquishment of a mechanic's lien.(2)

Articles of agreement were executed by which A agreed to let, and B agreed to take, a lot on ground rent. B covenanted to build within a certain time; but if the building should not be erected within that time, to deliver up the lot to A, and the agreement was then to be void. A covenanted to deliver a deed as soon as the building was finished. It was erected within due time, and the deed given. After the execution of the articles of

(1) Thompson's Case, 2 Browne 297.
(2) Kinsley *v.* Buchanan, 5 Watts 118.

agreement, and before the commencement of the building, several judgments were obtained against B, which were preferred to the liens of the claimants upon the building.(1) But where a similar agreement was made by A with C, who assigned his right to B, by whom the building was erected and the agreement performed, judgments, claims, &c. prior to the commencement of the building, but prior to the assignment, were postponed to the liens of the claimants upon the building for work done and materials furnished; the execution which issued after the assignment of the lot and commencement of the building having created no lien until *after* the mechanic's lien had attached.(1)

Where a claimant receives payment for materials furnished to two houses, without actual appropriation by either debtor or creditor to either house, and suffers his lien on one to expire, the matter is to be determined by the rules and circumstances of equity; and where the interest of the debtor could not be promoted by any particular appropriation, there is no ground for a presumption of any intention on his part, and the law raises a presumption, that the payment was

(1) Vandevender's Case, 2 Browne 304.

actually *received* in the way most advantageous to the creditor. This is the rule as between the original parties: but if after the payment a third person becomes a purchaser of one house, and the creditor has omitted to file his claim on the other house, he cannot, at the trial of a *scire facias* upon a claim filed against the house on which his lien still exists, appropriate this payment to discharge his demand against the house on which his lien had expired, to the injury of this third person, who without notice had purchased the house against which the lien was sought to be established.(1)

Where a lot of ground was sold by parol, the vendor retaining the title deeds, and the vendee took possession and commenced building a house, it was held that the vendor was entitled to the consideration money against the lien creditors for work and materials.(2)

An assessment by the commissioners of Kensington district for paving is, under the act of 3d February 1834 relating to taxes on real estate in the city and county of Philadelphia, a lien entitled to priority over the

(1) Harker *v.* Conrad, 12 S. & R. 301.
(2) Kline *v.* Lewis, C. P. Phil., Oct. 1820, MS.

claims of mechanics and material men and judgment creditors.(1)

A mechanic's lien filed by a member of an unincorporated association for the purposes of mutual benevolence, against a building erected by it, is not available against the liens of others not members.(2)

If persons jointly owning lots of ground, and erecting buildings upon them, to which they furnish work and materials, may file liens under the act of assembly, it can only be on the ground that they are *in equali jure*, and are to be considered as mutually waiving objections.(2) But if several mechanics of different kinds and material men separately own adjoining lots, they may agree each to erect a building on his own lot, and mutually to furnish work and materials to each other; and that the lien shall be restricted to the building of each for such labour and materials only as are contained in each building respectively:(3) and the true construction of such agreement would be, not that the party doing the work or furnishing the materials must show precisely that the certain quantity of materials found and work done, for which

(1) Pennock *v.* Hoover & Myers, 5 Rawle 291.
(2) Babb *v.* Reed, 5 Rawle 151.
(3) Croskey *v.* Coryell, 2 Whart. 223.

he claims payment on his lien, were used on a particular building against which he is proceeding, but only that that building was charged with no more than its due proportion of the materials or work which he furnished, and no more *in amount* than had been actually used in the construction of it.(1)

It was held under the act of 1806, in the case of Lyle *v.* Ducomb, 5 Binn. 585, where the plaintiff had a mortgage on a lot of ground, the property of the defendant, on which there was a frame house at the time of the mortgage, which was pulled down after the recording of the mortgage and a brick house substituted in its place, that the mortgagee had a lien not only on the lot, but also on the brick building erected subsequently to the recording of the mortgage, in preference to the mechanics and material men who were engaged in its erection. In that case the chief justice said, "it is contended that mortgages, &c. *prior* to the commencement of the building may be said according to the intent of this act (1806) to originate *subsequent* to the commencement of the building, so far as respects their lien on the building: and the argument is simply this, that it is

(1) Croskey *v.* Coryell, 2 Whart. 223.

impossible to have a lien on a thing not in existence, and therefore a mortgage cannot be a lien on a building before it is erected. In answer to this, it is to be considered that a mortgage is a legal conveyance of the land itself, and of course the mortgagee has the legal title, as long as the mortgage is in force, to the land, and every building erected on the land. It may be asked, and I see not how the question can be answered, at what moment the mortgage began to be a lien on the building, in the sense contended for by the defendant. Was it when the building commenced, or during the time that it was carrying on, or not until it was finished? The idea of separating the building from the ground on which it stands is altogether novel, and cannot be carried into practice without great difficulty. It is confessed that the land itself remains to the mortgagee, and of course that he may proceed to sell it under the mortgage. But the land cannot be sold without the house." The act gave no authority to the court to ascertain the separate value of the house and lot by a sale. It would be unjust that the mortgagee should be confined to the land alone, and that the mortgagor should prostrate the buildings already erected on the ground, and put up

others which might diminish the security of the former upon a sheriff's sale, if they are to be paid for out of the proceeds of such sale.(1)

As to the argument mentioned in the commencement of the chief justice's opinion above cited, he says, "the legislature, by mentioning *subsequent* liens, must have supposed that there might have been *prior* liens, which were to keep their preference. But if a mortgage bearing date before the commencement of the building was not prior, it is not easily to be conceived what could be prior. In fact, the defendant's argument proves too much; for, if it proves any thing, it must prove that it was impossible there should be *any* lien prior to the commencement of the building."(1)

It was held, in the same case, that a mortgage given on a lot to indemnify the mortgagee against loss, in consequence of his drawing notes in favour of the mortgagor, was as valid where the notes were to be drawn *in futuro* as where they were already drawn at the time of the mortgage; and that such mortgage was entitled to a preference over the liens of mechanics, &c. upon the build-

(1) Lyle *v.* Ducomb, 5 Binn. 585.

ing erected on the lot, for work done and materials furnished after the recording of the mortgage.(1)

In that case, by an indorsement on the mortgage after the commencement of the brick building, which was erected after the recording of the mortgage, it was agreed between the plaintiff and defendant, at the request of the latter, that instead of the plaintiff (mortgagee) being drawer of all the notes, some of them might be drawn by the defendant, (mortgagor) and indorsed by the plaintiff; and that the mortgage should be a security for the notes indorsed as well as the notes drawn. The court said that this was no departure from the original agreement, and could not prejudice third persons: and held that the mortgagee had a lien for the indorsements, not only against the mortgagor, but also against the mechanics and material men, who contributed work and materials to the building subsequently to the recording of the mortgage.—Yeates, J. *dissentiente.*(1)

A sale under a mortgage given on land previous to the erection of a building upon it, divests the lien of any incumbrance, and leaves the party to his claim on the purchase

(1) Lyle v. Ducomb, 5 Binn. 585.

money: and the claim filed by a mechanic cannot be the foundation of any proceeding against the house to which it attached in the hands of a purchaser.(1)

Where a lien creditor feels himself aggrieved by any of the circumstances connected with the sale, he should, previously to the acknowledgement of the deed by the sheriff, apply to the court from which the process on the mortgage issued, to set the sale aside; or if he could establish that, by any arrangement between the parties, the mortgage was satisfied, and that the money paid to the sheriff was applicable to the payment of the lien creditors, he should cause the money to be brought into court; and, on the division of the fund, test the legality of his claim, and that of other creditors to the proceeds.(1)

Under the act of 1806, if a lot was granted on a perpetual rent charge, and the grantee afterwards built a house, in doing which he contracted debts to mechanics and material men, their claims were not entitled to a preference over the rent; but otherwise, if the rent-charge accrued after the commencement of the building.(2)

(1) Leib *v.* Bean, 1 Ashm. 207.
(2) M'Call *v.* Lennox, Su. Ct. 1823, MS.; 1 Fr. J. 352.

CHAPTER IX.

OF JURISDICTION.

It was held, in 1816, that an alderman or justice of the peace had no jurisdiction of the action on a mechanic's lien; but that it should be brought in the common pleas, where the sum was under 100 dollars:(1) but in a mere personal action at common law, under that sum, such magistrate has always had jurisdiction.

The act of 1836, section 27, provides, "that nothing in this act contained shall be construed to affect the relative jurisdiction of the court of common pleas, and the district court of the city and county of Philadelphia, which shall remain as heretofore."

(1) Sharp *v.* Reese, D. C., April 1816, 1 Fr. J. 356.

CHAPTER X.

OF THE REMEDY TO ENFORCE THIS LIEN.

THE first act of assembly which gave mechanics and material men a lien on buildings, to which they had contributed labour and materials, was passed the 1st of April 1803. Under that act a lien on the building could be created only for debts contracted by the owner or owners thereof, and no suit could have been brought, or claim filed, against any other person, to enforce the lien; consequently there was no lien where the contractor and owner were distinct persons, which was, in many instances, the case.(1) That act recognized no remedy but the usual personal action against an owner, who had contracted the debt. It was intimated that an action on the case, under that act, ought to be special, and to mention the manner in which the defendant was liable, in order that a special judgment might be entered, not affecting the person of the defendant (the

(1) Rogers *v.* Klingler, 3 Whart. 332.

owner), but the building only.(1) This act was supplied and repealed by that of the 28th March 1806, which gave the party a lien, as well where the owner and contractor were distinct persons, as where they were the same. It gave no further mode of proceeding than the former, to make the lien effective, but left the lien creditor to his personal action, as before. This failure of remedy gave rise to the act of 28th March 1808, which enabled a party "*having a claim filed* agreeably" to its provisions and those of the former acts (i. e. within six months after the work finished, or materials furnished) to "proceed to recover it by personal action, according to the nature of the demand, against the debtor, his executors or administrators, or by *scire facias* against the debtor and owner of the building, or their executors or administrators."(2)

We will consider the subject, under this act, with reference to,

I. Personal action.

II. *Scire facias.*

And each of these in four cases, viz.:

1. Where the *owner* (not being the contractor) is made defendant.

(1) Steinmetz's Executors *v.* Boudinot, 3 S. & R. 541.

(2) 4 Sm. Laws 528.

2. Where the *contractor* (not being the owner) is made defendant.

3. Where A owner, and B contractor, are made defendants.

4. Where A, owner and contractor, is made defendant.

I. PERSONAL ACTION.

1. Where the owner (not being the contractor) is defendant.

A claimant cannot recover in a personal action against the owner (not being the contractor) even after a claim filed, under the act of 1808, as it gives this action against the debtor.

2. Where the contractor (not being the owner) is defendant.

It was held that, though the act of 1808 gives a personal action against the debtor, neither it, nor any other act, authorized the lien creditor, who had omitted to file his claim within the six months required, to bring a personal action against the contractor (not being the owner) alone, recover judgment against him alone, and sell the building under an execution, as the property of the contractor, although within the two years.(1)

(1) Rogers *v.* Klingler, 3 Whart. 332.

And it has since been held, in a case where the plaintiff declared in *assumpsit*, for lumber and other materials furnished at the request of the defendant, who was the contractor (not being the owner) for a certain building, that the court below erred in charging the jury that a claim filed within the six months, was not necessary to make the building liable by a judgment in that action, under the act of 1808; that the court were right in charging the jury that this action must be brought against the original debtor, and that it was a question for the jury who was the original debtor.(1) The court said, in that case, "it was settled by the supreme court, in the case of Klingler v. Rogers, that, under the act of 1808 and the prior acts, in no case whatever (except where there is a judicial sale of the premises within the two years) can the plaintiff have recourse to the buildings themselves, for work done or materials found, by a *scire facias*, or by a personal action against the contractor (not being the owner), unless the plaintiff has filed his claim within the six months. This is an indispensable prerequisite in every such case."

It seems nowhere decided, that the lien

(1) Linn *v.* Naglee, 4 Whart. 92.

creditor could proceed in a personal action against the contractor (not being the owner), recover judgment against him alone, and sell the building under an execution, as the property of the contractor, within the two years, even where he *had* filed his claim: he certainly could not, where he had omitted to file it. Nor even after a claim filed, where he failed to obtain a judicial sale within the two years, could he thus make his lien available.(1)

3. Where A owner, and B contractor, are made defendants.

The act of 1808 did not authorize a lien creditor, filing his claim against the building, to recover against it, in a personal action against A owner, and B contractor.

4. Where A, being both owner and contractor, is made defendant.

It was intimated that, under the act of 1803, an action on the case against A, the owner and contractor, ought to have been special, and have mentioned the manner in which the defendant was liable, in order that a special judgment might have been entered, not affecting the person of the defendant (owner) but the building only :(2) but *quære*,

(1) Rogers *v.* Klingler, 3 Whart. 332.

(2) Steinmetz's Executors *v.* Boudinot, 3 S. & R. 541.

whether, under the act of 1808, a personal action against such person (being both owner and debtor) could enforce the lien of the claimant, under the act of 1806, or merely give him a lien from the date of the judgment obtained in it?

II. SCIRE FACIAS.

1. The act of 1808 does not give the lien creditor, filing his claim, a *scire facias* against the owner alone (not being the contractor).(1)

2. Nor does it give him a *scire facias* against the contractor (not being the owner), but directs it to issue against the debtor and owner.

3. Where the debtor and owner are distinct persons, they must be joined in a *scire facias*:(2) though it seems a lessee might be substituted for the owner, as a party to it, if he had contracted for the materials.(3)

4. Though the words of the act of 1808 give this *scire facias* against the "debtor and owner," a reasonable construction would give it against the owner alone, where he was the contractor.

(1) Barnes *v.* Wright, 2 Whart. 193.

(2) Barnes *v.* Wright, 2 Whart. 193; Hampton *v.* Broom, 1 Miles 241.

(3) Anshutz *v.* M'Clelland, 5 Watts 487.

No *scire facias*, in any case, could be maintained under the act of 1808, where no claim had been filed within the time required by it.(1) This *scire facias*, like an action of *assumpsit*, must have followed the nature of the contract; and if one of the partners who ought to have joined as plaintiffs in it, brought the action alone, the defendant might have taken advantage of such omission, under the general issue. Where A and B, after furnishing lumber for a building, dissolved partnership, the debts of the firm being made over to A, and a claim was filed and a *scire facias* issued in the name of A, it was held that the claim should have been filed, and the *scire facias* entitled, in the name of the firm.(2)

It seems that the act of 1831 also requires the debtor and owner to be joined in a *scire facias*.(3) Under that act, it was held that, where a claim had been apportioned among several houses, one *scire facias* against all, for the whole amount, could not be maintained.(3)

The act of 16th June 1836 seems likewise

(1) Linn *v.* Naglee, 4 Whart. 92; Rogers *v.* Klingler, 3 Whart. 332.

(2) Howard *v.* M'Kowen, 2 Browne 150.

(3) Barnes *v.* Wright, 2 Whart. 193.

to require that the owner and the debtor (when they are distinct persons) should be joined in a *scire facias*: as, by section six, the claim must set forth the name of the owner or reputed owner, and also that of the contractor, architect or builder; and it has always been held that the writ of *scire facias* should pursue the claim filed of record. No declaration need have been filed in a *scire facias*, under the act of 1808:(1) nor does it seem to be necessary under the acts of 1831 and 1836. The latter act provides that no such *scire facias* shall in any case be issued, within fifteen days previous to the return day of the next term.

A *scire facias* was issued on a mechanic's claim on the 20th of September 1836, returnable on the first Monday of October following, being an interval of only thirteen days. The claim had been filed before the 1st of September 1836, when the new mechanic's lien act came into operation. On motion to quash the *scire facias*, on the ground that the sixteenth section of the new act required this writ to issue at least fifteen days previous to the return day, the court held, that the claim having been filed under the act of 17th

(1) Ridgway *v.* Hess, 1 Browne 347.

March 1806, the provisions of the *new* act did not apply to any proceedings upon it.(1)

Whether or not the acts of 1806 and 1808 are supplied or repealed by the act of 16th June 1836, they are still in force and operation in Bradford county, under the act of 16th April 1838. This act does not extend the provisions of the act of 16th June 1836 to that county.(2)

CHAPTER XI.

OF THE PLEADINGS.

By the second section of the act of 1808, when the defendants appear, they may plead and make defence, and the like proceedings shall be had as in personal actions for the recovery of debts. On the plea of payment to a *scire facias*, advantage cannot be taken of the invalidity of the lien: for this plea admits the truth of the averments in the *scire facias*.(3) A judgment for the defendant in a personal action by the mechanic or material

(1) Evans *v.* Springer, D. C., Phil., Dec. T. 1836; Str. Purd. 687.

(2) Pamph. Laws 626.

(3) Lewis *v.* Morgan, 11 S. & R. 234.

man, against the owner of a building, may be pleaded in bar to a *scire facias*, against the same person, on a claim filed in the common pleas, by the same plaintiff, against the building.(1) Where a *scire facias* was brought on a claim filed under the act of 1808, against A owner, and B contractor, a plea that a previous *scire facias* on the same claim had issued at the suit of the same plaintiff against C owner and B contractor, on which there was a judgment for the defendants, was held not to be a good plea of former recovery.(2) If one of several persons, who ought to join in such *scire facias*, bring the action alone, the defendant is not obliged to plead the omission in abatement, but may take advantage of it on the general issue.(3)

The nineteenth section of the act of 1836 provides that, upon the return of the *scire facias* given by it, "it shall be lawful for any other person, having filed a claim as aforesaid, to cause to be entered on the record of the same suit a suggestion, setting forth the

(1) Whelan *v.* Hill, 2 Whart. 118. *Quære.* Would the recovery of such a judgment, in a personal action against the architect, before a magistrate, bar the proceeding for same cause of action by *scire facias*, on a lien filed against the building?

(2) Hampton *v.* Broom, 1 Miles 241.

(3) Howard *v.* M'Kowen, 2 Browne 150.

amount and nature of his demand, and thereupon he may have a rule upon the defendant to appear and plead thereto, as in other actions." By the twentieth section, "if the defendant shall appear and plead to such suggestion, and issue, either in fact or law, be joined upon any plea, such particular issue shall be tried and determined as in other cases: if the defendant shall not plead to such suggestion, after due notice, judgment shall be entered for the claimant filing the claim, and the amount of the claim shall be ascertained as in other cases."

Unliquidated damages, arising from deficiency in the performance of a contract for the erection of a building, may be given in evidence, as a *set-off* against the plaintiff's claim, under a mechanic's lien, but will not authorize the jury to find a balance in favour of the defendant. A certificate to that effect, found by the jury, will be quashed; while the judgment upon the finding is faultless, and will not be reversed.(1)

(1) Bayne *v.* Gaylord, 3 Watts 301.

CHAPTER XII.

OF EVIDENCE.

A JUDGMENT in a personal action before a magistrate, against the contractor, was held not to be evidence in a *scire facias* under the act of 1808, if it did not appear to have been for the same cause of action.(1)

The book of original entries of the plaintiff is admissible in a *scire facias* on a claim to prove that the materials for which the suit was brought were furnished at and for the particular building which is the subject of the lien.(2) The declarations of the owner of the building, that he had retained the money to discharge the liens, are also evidence in a *scire facias* against him :(3) but the claim cannot be read in evidence.(4) It was held on the trial of a *scire facias* upon a claim filed against one as the reputed owner, who had conveyed a house with warranty, that he was

(1) Lewis *v.* Morgan, 11 S. & R. 234.
(2) M'Mullin *v.* Gilbert, 2 Whart. 277.
(3) Lewis *v.* Morgan, 11 S. & R. 234.
(4) Hills *v.* Elliot, 16 S. & R. 56.

not a competent witness for his grantee, the real defendant.(1)

In *assumpsit* for lumber furnished for a certain building at the request of the defendant, the plaintiff's books of original entries were offered in evidence. The books contained several entries of lumber furnished for the building: one of them charged the defendant on account of A & B, (the original owners of the lot); others charged A & B for lumber "got by" the defendant, &c. Evidence was given to show that the defendant had ordered the lumber in question. It was held, that the entries were admissible to show the amount and price of the articles furnished.(2)

CHAPTER XIII.

OF JUDGMENT AND EXECUTION.

THE act of 1808 directs that, in case of return of service and failure of the defendants named in the writ of *scire facias* to appear,

(1) Hopkins *v.* Conrad, 2 Rawle 316.
(2) Linn *v.* Naglee, 4 Whart. 92.

the court shall render judgment as in case of a summons; viz., a judgment by default for want of appearance. It also provides that no judgment rendered in any such *scire facias* shall warrant the issuing an execution except against the building or buildings upon which the lien existed.

The act of 1836 provides that, upon the return of the writ, it shall be lawful for any other person having a claim filed as aforesaid, to cause to be entered on the record of the same suit a suggestion setting forth the amount and nature of his demand; and, thereupon, he may have a rule upon the defendant to appear and plead thereto, as in other actions. By the twentieth section, if the defendant shall appear and plead to such suggestion, and issue, either in fact or law, be joined upon any plea, such particular issue shall be tried and determined as in other cases: if the defendant shall not plead to such suggestion, after due notice, judgment shall be entered for the claimant filing the same, and the amount of the claim shall be ascertained as in other cases. The twenty-first section of the same act directs, that the "execution for every *such judgment* shall be by a writ of *levari facias*," in the form given by that section. Though this section lite-

rally refers to the judgment mentioned in the preceding section, which was to be entered for the claimant filing the *suggestion*, yet it seems that this writ of *levari facias* is the proper mode of enforcing an execution on a judgment against the original claimant who sued out the *scire facias*.(1) A mechanic's claim was filed 7th April 1835, describing the property with sufficient accuracy according to the decisions on the act of 17th March 1806. The court refused a motion to amend the record by filing a complete description, as the foundation of a *levari facias* under the act of 16th June 1836, saying that this act did not apply to claims filed prior to the time when it came into effect, and that the execution on judgments founded on claims like the present must be by *fieri facias*, according to the practice under the *old* law, and not by *levari facias* as directed by the new.(1) On a sale of a building by virtue of a judgment and execution, mechanic's liens upon the property are to be paid out of the purchase money.(2)

Although the words of the act of 21st

(1) Matlack *v.* Hoy, C. P. Phil., Dec. Term 1836; Str. Purd. 687.

(2) Werth *v.* Werth, 2 Rawle 151.

March 1806,(1) allowing a stay of execution on the judgment in all suits instituted by *capias* or summons, do not seem to include the case of a *scire facias* upon a claim, in which the judgment is not against the person but the building; yet our courts have heretofore countenanced the practice of taking security for the *cesset*, as in other cases. Attempts have been made to overturn this practice; but, inasmuch as it rather benefits the plaintiff by giving him additional security, and gives the defendant time to prevent perhaps a sacrifice of his estate, and does not palpably infringe the act of assembly, those efforts have invariably proved abortive. This practice may therefore be considered as established in the courts of Philadelphia county.(2)

CHAPTER XIV.

OF COSTS.

THE costs of a *scire facias* on a mechanic's lien are to be paid out of the fund raised by

(1) 4 Smith's Laws 329.
(2) 2 Troub. & Haly's Practice 304.

the sale of the building upon which the lien attached, in like manner as the amount of the lien; although the *scire facias* had not been prosecuted to judgment at the time of sheriff's sale.(1)

A *scire facias* on a mechanic's claim was arbitrated, and an award made for the plaintiff, on which the defendant appealed; and during the pendency of the appeal the property was sold by the sheriff, and the whole proceeds were applied to the payment of liens prior to that of the plaintiff. On the application of the plaintiff, the court stayed further proceedings; although the application was resisted by the defendant, on the ground that he would thereby be deprived of the opportunity of recovering back the costs which he had paid on the appeal.(2)

(1) M'Laughlin *v.* Smith, 2 Whart. 122.
(2) Matlack *v.* Deal, 1 Miles 254.

PART II.

FORMS OF CLAIMS.

Form of claim by a house-carpenter against one who is owner and contractor, for work and materials for a building.

A. B. } In the court for the county of
v.
C. D. } term 184 , No.

A. B., house-carpenter, of the county of , files this his claim for the payment of the sum of dollars and cents, against all that certain story building, situate in street, between and streets, in the of in the said county, containing in front on said street feet, and in depth feet, and the lot or piece of ground and curtilage appurtenant to said building: the said sum of dollars and cents being a debt contracted for work: viz., carpenter's work, &c., and materials; viz., bricks, lime, sand, lumber,

ironmongery, &c. &c. &c., done and furnished by the said A. B., within six months last past, for and about the erection and construction of said building and appurtenances, of which the said C. D. was and is the owner or reputed owner, and at his instance and request, he being the contractor, architect and builder thereof; and the said A. B. claims to have a lien on the said building and the lot or piece of ground and curtilage appurtenant to said building from the commencement thereof, for the sum aforesaid, according to the act of assembly in such case made and provided: and said claimant hereto annexes a bill of particulars of the amount of his said debt, showing the nature and kind of work done, the kind and amount of materials furnished, and the time when the said work and materials were done and furnished.

(Plaintiff's bill annexed.)

Form of claim filed by a house-carpenter against C. D. owner, and E. F. contractor, for work and materials for a building.

A. B. } In the court of for the county
v. } of
C. D. & E. F. } term 184 , No. .

A. B., of the county of , house-carpenter, files this his claim for the payment of the sum of dollars and cents, against all that certain story (stone, brick or frame) building, situate in street, between and streets, in in the county aforesaid, containing in front on said street feet, and in depth feet, and the lot or piece of ground and curtilage appurtenant to said building: the said sum of dollars and cents being a debt contracted for work: viz., carpenter's work, &c. &c., and materials; viz., lumber, lime, bricks, &c. &c., done and furnished by the said A. B., within six months last past, for and about the erection and construction of the said building and appurtenances, of which the said C. D. is the owner or reputed owner, and the said E. F. the architect, builder and contractor for the said work and materials, at whose instance and request they were done and fur-

nished as aforesaid: and the said A. B. claims to have a lien on the said building and lot or piece of ground and curtilage appurtenant to said building, from the time of its commencement, for the sum aforesaid, according to the act of assembly in such case made and provided: and said claimant hereto annexes a bill of particulars of the amount of his said debt, showing the nature and kind of work done, the kind and amount of materials furnished, and the time when the said work was done, and the said materials furnished as aforesaid.

(Plaintiff's bill annexed.)

Form of claim filed by a brickmaker against one who is owner and contractor, for materials furnished for one building.

A. B. } In the court for the county of .
v. } term 184 , No. .
C. D. }

A. B., brickmaker, of the county of , claims in his own right a lien for the payment of the sum of dollars against all that certain story brick building (or messuage and tenement) situate in street, between and streets,

No. , in the of in the county aforesaid, containing in front on said street feet, and in depth feet, and the lot or piece of ground and curtilage appurtenant to said building: the said sum of dollars being a debt contracted for materials: viz., bricks, furnished by the said A. B. within six months last past for and about the erection and construction of the said building, of which the said C. D. was and is the owner or reputed owner, and at his instance and request, he being the contractor, architect and builder thereof: and said claimant hereto annexes a bill of particulars of the amount of his said debt, showing the kind and amount of materials furnished, and the time when said materials were furnished as aforesaid.

(Plaintiff's bill annexed.)

Form of claim filed by a brickmaker against C. D. owner, and E. F. contractor, for materials furnished for one building.

A. B. v. C. D. & E. F. } In the court of for the county of , term 184 , No.

A. B., brickmaker, of the county of , files this his claim in his own right for ma-

terials: viz., bricks, furnished for and about the erecting and constructing a certain story brick building, situate in street, betwen and streets, No. , in the of in the county aforesaid, containing in front on said street feet, and in depth feet, of which C. D. was and is the owner or reputed owner, and E. F. the architect, builder and contractor for said materials, furnished by the said A. B. within six months last past to said building, at the instance and request of the said E. F. contractor. This claim is filed as well against said building as against the lot or piece of ground and curtilage appurtenant to the same: and the said A. B. annexes hereto a statement of the particulars of the amount of his said debt, showing the kind and amount of materials furnished, and the time when said materials were furnished.

(Plaintiff's bill annexed.)

Form of claim filed by a brickmaker against one who is owner and contractor, for materials furnished for two or more buildings, where the amount claimed is equally divided.

A. B. } In the court for the county of .
v. term 184 , No. .
C. D. }

A. B., brickmaker, of the county of , files this his claim for the payment of the sum of dollars and cents against all those certain story brick houses (or buildings) situate in the of in the county aforesaid, in street, between and streets, each house being about feet in front on said street, and in depth feet, and the lots or pieces of ground and curtilages appurtenant to said buildings: the said sum of dollars being a debt contracted for materials: viz., bricks, furnished and provided by the said A. B. within six months last past for and about the erection and construction of the said buildings, of which the said C. D. was and is the owner or reputed owner, and at his instance and request, he being the contractor, architect and builder thereof; and the amount claimed to be due on each of the said buildings for materials furnished and

provided as aforesaid, is dollars and cents, which the said claimant hereby designates according to the act of assembly in such case made and provided, and claims to have a lien for on the said buildings and appurtenances from the commencement of the same: and said claimant hereto annexes a bill of particulars of the amount of his said debt, showing the kind and amount of materials furnished, and the time when said materials were furnished as aforesaid.

(Plaintiff's bill annexed.)

Form of claim filed by a brickmaker against C. D. owner, and E. F. contractor, for materials furnished for two or more buildings, where the amount claimed is equally divided.

A. B. } In the court for the county
v. } of
C. D. & E. F. } term 184 , No.

A. B., brickmaker, of the county of , files this his claim for the payment of the sum of dollars and cents, against all those certain story brick houses, situate in the of in the county aforesaid, at the corner of and streets, (or as the case may be) each house being about feet in

front on said street, and feet in depth on said street, and the lots or pieces of ground and curtilages appurtenant to said buildings: the said sum of dollars and cents being a debt contracted for materials: viz., bricks, furnished by the said A. B. within six months last past for and about the erection and construction of the said buildings, of which the said C. D. was and is the owner or reputed owner, and E. F. the architect, builder and contractor for said materials, at whose instance and request they were furnished as aforesaid: and the amount claimed to be due on each of the said buildings for the said materials is dollars and cents, which the said claimant hereby designates according to the act of assembly in such case made and provided, and claims to have a lien for on said buildings and appurtenances from the commencement of the same; and said claimant hereto annexes a bill of particulars of the amount of his said debt, showing the kind and amount of materials furnished, and the time when said materials were furnished as aforesaid.

(Plaintiff's bill annexed.)

Form of claim filed by a brickmaker against C. D. owner, and E. F. contractor, for materials furnished for two or more buildings, where the amount claimed is unequally divided.

A. B. } In the court for the county
v. } of
C. D. & E. F. } term 184 , No. .

A. B., brickmaker, of the county of , files this his claim for the payment of the sum of dollars and cents against all those certain brick houses, situate in in the county aforesaid, in street, between and streets, and the lots or pieces of ground and curtilages appurtenant to the said buildings: being a debt contracted for materials; viz., bricks, &c., furnished by the said A. B. within six months last past for and about the erection and construction of the said buildings, of which the said C. D. was and is the owner or reputed owner, and E. F. the architect, builder and contractor for said materials, at whose instance and request they were furnished as aforesaid: and the said A. B. hereby designates the amount he claims to be due to him for the same on each of the said buildings, as follows: viz., on the northernmost of the said buildings, which is a three

story (or as the case may be) brick house, feet in front on said street, by feet in depth, and the lot or piece of ground and curtilage appurtenant to said building, the sum of thousand dollars and cents; on the southernmost of said buildings, which is a two story (or as the case may be) brick, feet in front on said street, by feet in depth, and the lot or piece of ground and curtilage appurtenant to said building, the sum of hundred dollars and cents; according to the act of assembly in such case made and provided; and claims to have a lien on the said buildings and appurtenances for the same from the time of their commencement; and said claimant hereto annexes a bill of particulars of the amount of his said debt, showing the kind and amount of materials furnished, and the time when said materials were furnished as aforesaid.

(Plaintiff's bill annexed.)

Form of claim filed by a brickmaker against one who is owner and contractor, for materials furnished for two or more buildings, where the amount claimed is unequally divided.

A. B. } In the court for the county of .
v. } term 184 , No. .
C. D. }

A. B., brickmaker, of the county of , files this his claim for the payment of the sum of dollars and cents against all those certain brick houses, situate in the of in the county aforesaid, in street, between and streets, and the lots or pieces of ground and curtilages appurtenant to said buildings: being a debt contracted for materials: viz., bricks, furnished by the said A. B. within six months last past for and about the erection and construction of the said buildings, of which the said C. D. was and is the owner or reputed owner, and at his instance and request, he being the architect, contractor and builder thereof; and the said A. B. hereby designates the amount he claims to be due to him for the same on each of the said buildings, as follows: viz., on the northernmost of the said buildings, which is a

three story (or as the case may be) brick house, feet in front on said street, by feet in depth, and the lot or piece of ground and curtilage appurtenant to said building, the sum of thousand dollars and cents; on the southernmost of said buildings, which is a two story (or as the case may be) brick, feet in front on said street, by feet in depth, and the lot or piece of ground and curtilage appurnant to said building, the sum of hundred dollars and cents, according to the act of assembly in such case made and provided; and claims to have a lien on said building and appurtenances thereto for the same from the time of their commencement: and said claimant hereto annexes a bill of particulars of the amount of his debt, showing the kind and amount of materials furnished, and the time when said materials were furnished as aforesaid.

(Plaintiff's bill annexed.)

Form of claim filed against one who is owner and contractor, by a bricklayer, for work.

A. B. } In the court of for the county of .
v. } term 184 , No. .
C. D. }

A. B., of the county of , bricklayer, claims in his own right a lien for the payment of the sum of dollars against all that certain story brick house (or building) situate (describing the situation and size of the building) in the of in the county aforesaid, and the lot or piece of ground and curtilage appurtenant to said building: the said sum of dollars being a debt contracted for work; viz., bricklaying, &c., done by the said A. B. within six months last past for and about the erection and construction of the said building, of which the said C. D. was and is the owner or reputed owner, and at his instance and request, he being the contractor, architect and builder thereof; and said claimant hereto annexes a bill of particulars of the amount of his said debt, showing the nature and kind of work done, and the time when said work was done as aforesaid.

(Plaintiff's bill annexed.)

Form of claim filed against C. D. owner and E. F. contractor, by a bricklayer, for work.

A. B. } In the court for the county
v. } of
C. D. & E. F. } term, 184 , No. .

A. B., bricklayer, of the county of , files this his claim in his own right for work: viz., bricklayer's work, done for and about the erecting and constructing a certain story brick building (or all that certain story brick messuage and tenement) situate, &c., (here follows the description of its size and situation or boundaries) in the of in the county aforesaid, of which C. D. was and is the owner or reputed owner, and E. F. the architect, builder and contractor for said work, done by the said A. B. within six months last past to said building, at the instance and request of the said E. F. contractor. This claim is filed as well against said building as against the lot or piece of ground and curtilage appurtenant to the same; and the said A. B. annexes hereto a statement of the particulars of the amount of his said debt, showing the nature and kind of

work done, and the time when said work was done as aforesaid.

(Plaintiff's bill annexed.)

Form of claim filed by a lumberman against one who is owner and contractor for lumber furnished for one building.

A. B. } In the court for the county of .
v. } term 184 , No. .
C. D. }

A. B., lumber merchant, of the county of files this his claim for the payment of the sum of dollars and cents against all that certain story messuage and tenement, situate in in the township of in the county aforesaid, on the north side of road, containing in front on said road feet, more or less, and in depth about feet, (or otherwise describing its situation, boundaries, &c.) and the lot or piece of ground and curtilage appurtenant to said building: the said sum of dollars and cents being a debt contracted for materials: viz., lumber, furnished by the said A. B. within six months last past for and about the erection and construction of the said building, of which the said

C. D. was and is the owner or reputed owner, and at his instance and request, he being the contractor, architect and builder thereof; and the said A. B. claims to have a lien for the aforesaid sum of dollars and cents on the said building and lot or piece of ground and curtilage appurtenant thereto, from its commencement, according to the act of assembly in such case made and provided; and said claimant hereto annexes a bill of particulars of the amount of the said debt, showing the kind and amount of materials furnished, and the time when said materials were furnished.

(Plaintiff's bill annexed.)

Form of claim filed by a lumberman against C. D. owner and E. F. contractor, for lumber furnished for one building.

A. B. v. C. D. & E. F. } In the court for the county of term 184 , No.

A. B., lumber merchant, of the county of , files this his claim for the payment of the sum of dollars and cents, against all that certain story messuage and tenement, situate in ,

in the township of in the county aforesaid, on the south side of the road, containing in front on said road feet, more or less, and in depth about feet, and the lot or piece of ground and curtilage appurtenant to said building: the said sum of dollars and cents being a debt contracted for materials, to wit, lumber, furnished by the said A. B. within six months last past, for and about the erection and construction of the said building, of which the said C. D. was and is the owner or reputed owner, and the said E. F. the architect, builder and contractor for said materials, at whose instance and request they were furnished and provided, as aforesaid: and the said A. B. claims to have a lien for the aforesaid sum, on the said building and lot, or piece of ground and curtilage appurtenant to said building, from the commencement of the same, according to the act of assembly in such case made and provided: and said claimant hereto annexes a bill of particulars of the amount of the said debt, showing the kind and amount of materials furnished, and the time when said materials were furnished.

(Plaintiff's bill annexed.)

Form of claim filed by lumber merchants (partners) against one who is owner and contractor, for lumber furnished for two or more buildings, where the amount claimed is equally divided.

A. B. & C. D., merchants in copartnership, trading under the firm of A. B. & Co.
v.
E. F.

In the court for the county of , term 184 , No.

A. B. & C. D., lumber merchants, in copartnership, trading under the firm of A. B. & Co., of the county of , file this their claim for the payment of the sum of dollars and cents against all those certain story houses situate in the of in the county aforesaid, in street, between and streets, each house being about feet in front on said street, and in depth about feet, and the lots or pieces of ground and curtilages appurtenant to said buildings: the said sum of dollars and cents being a debt contracted for materials, viz., lumber found, furnished and provided by the said A. B. & C. D., within six months last past, for and about the erection and construction of the said buildings, of which the said E. F. was and is the owner or reputed owner, and at his

instance and request, he being the contractor, architect and builder thereof: and the amount claimed to be due on each of the said buildings, for materials found, furnished and provided as aforesaid, is dollars and cents, which the said claimants hereby designate, according to the act of assembly in such case made and provided: and claim to have a lien for on said buildings and appurtenances, from the commencement of the same: and said claimants hereto annex a bill of particulars of the amount of their said debt, showing the kind and amount of materials furnished, and the time when said materials were furnished, as aforesaid.

(Plaintiffs' bill annexed.)

Form of claim filed by lumbermen (partners) against E. F. owner or reputed owner, and G. H. contractor, for lumber furnished for two or more buildings, where the amount claimed is equally divided.

A. B. & C. D., lumber merchants, in copartnership, &c., &c. (see last form) v. E. F. & G. H.	In the court for the county of , term, 184 , No. .

A. B. & C. D., lumber merchants, &c., &c. (as per last form), of the county of ,

file this their claim for the payment of dollars and cents, against all those certain story houses situate in the of in the county aforesaid, between and streets, in street, each house being about feet in front on said street, and feet in depth, and the lots or pieces of ground and curtilages appurtenant to said buildings: the said sum of dollars and cents, being a debt contracted for materials, viz., lumber found, furnished and provided within six months last past by the said A. B. & C. D., for and about the erection and construction of the said buildings, of which the said E. F. was and is the owner or reputed owner, and the said G. H. the architect, builder and contractor for said materials, at whose instance and request they were found, furnished and provided, as aforesaid: and the amount claimed to be due on each of the said buildings for the said materials, is dollars and cents, which the said claimants hereby designate, according to the act of assembly in such case made and provided, and claim to have a lien for on said buildings and appurtenances from the commencement of the same: and said claimants hereto annex a bill of particulars of the amount of their said debt, showing the

kind and amount of materials furnished, and the time when said materials were furnished, as aforesaid.

(Plaintiffs' bill annexed.)

Form of claim filed by lumber merchants (partners) against one who is owner and contractor, for lumber furnished for two or more buildings, where the amount claimed is unequally divided.

A. B. & C. D., lumber merchants, in copartnership, trading under the firm of A. B. & Co. *v.* E. F.	In the county of	court for the . term, 184 , No. .

A. B. & C. D., lumber merchants, in copartnership, trading under the firm of A. B. & Co., of the county of , file this their claim for the payment of the sum of dollars and cents against all those certain houses situate in the of in the county aforesaid, in street, between and streets, Nos. and , and the lots or pieces of ground and curtilages appurtenant to said buildings: being a debt contracted for materials, to wit, lumber furnished by the said A. B. & C. D., within six months last past, for and about the erection

and construction of the said buildings, of which the said E. F. was and is the owner or reputed owner, and at his instance and request, he being the architect, contractor and builder thereof: and the said A. B. & C. D. hereby designate the amount they claim to be due to them for the same, on each of the said buildings, as follows: viz., on the northernmost of the said buildings, which is a three story (or as the case may be) brick house, feet in front on said street, by feet in depth, and the lot or piece of ground and curtilage appurtenant to said building, the sum of thousand dollars and cents: on the southernmost of said buildings, which is a two story (or as the case may be) brick, feet in front on said street, by feet in depth, and the lot or piece of ground and curtilage appurtenant to said building, the sum of hundred dollars and cents, according to the act of assembly in such case made and provided; and claim to have a lien on said buildings and appurtenances thereto for the sum aforesaid, from the time of their commencement: and said claimants hereto annex a bill of particulars of the amount of their said debt, showing the kind and amount of materials

furnished, and the time when said materials were furnished, as aforesaid.

(Plaintiffs' bill annexed.)

Form of claim filed by lumber merchants (partners) against E. F. owner and G. H. contractor, for lumber furnished for two or more buildings, where the amount claimed is unequally divided.

A. B. & C. D., lumber merchants, &c., &c., &c. *v.* E. F. & G. H.	In the court for the county of . term 184 , No. .

A. B. & C. D., lumber merchants, &c., &c., (as per last form) file this claim for the payment of the sum of dollars and cents, against all those certain houses situate in , in the county of aforesaid, in street, between and streets, and the lots or pieces of ground and curtilages appurtenant to said buildings: being a debt contracted for materials, to wit, lumber furnished by the said A. B. & C. D. within six months last past, for and about the erection and construction of the said buildings, of which the said E. F. was and is the owner or reputed owner, and the said G. H. the architect, builder and contractor for the

said materials, at whose instance and request they were furnished, as aforesaid: and the said A. B. & C. D. hereby designate the amount they claim to be due to them for the said materials on each of the said buildings, as follows, viz., on the northernmost of the said buildings, which is a story brick house, feet in front on said street, by feet in depth, and the lot or piece of ground and curtilage appurtenant to said building, the sum of thousand dollars and cents: on the southernmost of the said buildings, which is a story frame tenement, feet in front on said street, by feet in depth, and the lot or piece of ground and curtilage appurtenant to said building, the sum of dollars, according to the act of assembly in such case made and provided, and claim to have a lien on the said buildings and appurtenances for the same, from the time of their commencement: and said claimants hereto annex a bill of particulars of the amount of their said debt, showing the kind and amount of materials furnished, and the time when the said materials were furnished, as aforesaid.

(Plaintiffs' bill annexed.)

Form of claim by a painter and glazier against one who is owner and contractor, for work and materials for one building.

A. B. } In the court for the county of
v. } term 184 , No.
C. D. }

A. B., painter and glazier, of the county of , files this his claim for the payment of the sum of dollars and cents against all that certain story messuage and tenement, situate (describing the boundaries and situation, according to the other forms) in the town of , in the township of (or city, as the case may be), in the county of , and the lot or piece of ground and curtilage appurtenant to said building: the said sum of dollars and cents, being a debt contracted for work, viz., painting and glazing, and materials, viz. paint, glass, putty, &c. (as the case may be) done and furnished by the said A. B. within six months last past, to, in and about the erection and construction of the said building and appurtenances, of which the said C. D. was and is the owner or reputed owner, and at his instance and request, he being the contractor, architect and builder thereof: and the said A. B. claims to have a lien on the

said building and lot or piece of ground and curtilage appurtenant to said building, from the commencement thereof, for the sum aforesaid, according to the act of assembly in such case made and provided; and said claimant hereto annexes a bill of particulars of the amount of his said debt, showing the nature and kind of work done, the kind and amount of materials furnished, and the time when the said work was done and materials furnished.

(Plaintiff's bill annexed.)

Form of claim by a painter and glazier against C. D. owner and E. F. contractor, for work and materials for one building.

A. B. } In the court of for the county
v. } of
C. D. & E. F. } term 184 , No.

A. B., painter and glazier, of the county of , files this his claim for the payment of the sum of dollars and cents against all that certain story building, situate, &c. &c., (see other forms) in the of in the county of , and the lot or piece of ground and curtilage appurtenant to said building: the said sum of dollars and cents, being

a debt contracted for work: viz., painting and glazing, and materials: viz., (naming them) done and furnished by the said A. B. within six months last past to, in and about the erection and construction of the said building and appurtenances, of which the said C. D. was and is the owner or reputed owner, and E. F. the architect, builder and contractor for said work and materials, at whose instance and request they were done, furnished and provided as aforesaid; and the said A. B. claims to have a lien on the said building, and lot or piece of ground and curtilage appurtenant to said building, from the commencement thereof, for the sum aforesaid, according to the act of assembly in such case made and provided: and said claimant hereto annexes a bill of particulars of the amount of his said debt, showing the nature and kind of work done, the kind and amount of materials furnished, and the time when the said work was done and materials furnished.

(Plaintiff's bill annexed.)

PART III.

ACTS OF ASSEMBLY.

Act of 1st April 1803, Pamph. L. 591.

(Repealed 17th March 1806.)

An act securing to mechanics and others payment for their labour and materials in erecting any house or other building within the city of Philadelphia, the district of Southwark and the township of the Northern Liberties.

SECT. 1. All and every dwellinghouse or other building hereafter constructed and erected within the city of Philadelphia, the district of Southwark and the township of the Northern Liberties, shall be subject to the payment of the debts contracted by the owner or owners thereof, for or by reason of any work done or materials found and provided by any brickmaker, bricklayer, stonecutter, mason, lime merchant, carpenter, painter and glazier, ironmonger, blacksmith, plasterer and lumber merchant, or any other person or persons employed in furnishing materials for or in the erecting and constructing such house or other building, before any other lien which originated subsequent to the commencement of the said house or other building; but if such house or other building should not sell for a sum of money sufficient to pay all the demands for work and materials, then and in such case the same shall be averaged, and the said creditors paid an equal sum or proportion in the dollar: *Provided always,*

that no such debt for work and materials shall remain a lien on the said houses or other buildings longer than two years from the commencement of the building of the same, unless an action for the recovery thereof be instituted or the claim filed within six months after performing the work or furnishing the materials aforesaid, in the office of the prothonotary of the county where such houses or other buildings lie.

SECT. 2. This act shall be and continue in force for three years from the passing thereof, and from thence to the end of the next session of the general assembly, and no longer.

Act of 17th March 1806, 4 Sm. L. 300.

An act securing to mechanics and others payment for their labour and materials in erecting any house or other building within the city and county of Philadelphia.

SECT. 1. All and every dwellinghouse or other building hereafter constructed and erected within the city and county of Philadelphia shall be subject to the payment of the debts contracted for or by reason of any work done or materials found and provided by any brickmaker, bricklayer, stonecutter, mason, lime merchant, carpenter, painter and glazier, ironmonger, blacksmith, plasterer and lumber merchant, or any other person or persons employed in furnishing materials for or in the erecting and constructing such house or other building, before any other lien which originated subsequent to the commencement of the said house or other building: but if such house or other building should not sell for a sum of money sufficient to pay all the demands for work and materials, then, and in such case, the same shall be averaged, and each of the creditors paid a sum proportioned to their several demands: *Provided always*, that no such debt for work and materials shall remain a lien on the said houses or other buildings longer than two years from the commencement of the building thereof, unless an action for the reco-

very of the same be instituted or the claim filed, within six months after performing the work or furnishing the materials, in the office of the prothonotary of the county: *And provided also*, that each and every person having received satisfaction for his or their debt, for which a claim has been or shall be filed or action brought as aforesaid, shall, at the request of any person interested in the building on which the same was a lien, or in having the same lien removed, or of his, her or their legal representatives, on payment of the costs of the claim or action, and on tender of the costs of office, for entering satisfaction within six days after such request made, enter satisfaction of the claim in the office of the prothonotary of the court where such claim was or shall be filed or such action brought, which shall for ever thereafter discharge, defeat and release the same; and if such person, having received satisfaction as aforesaid, by himself or his attorney, shall not, within six days after request and payment of the costs of the claim or action, and tender as aforesaid by himself or his attorney duly authorized, enter satisfaction as aforesaid, he, she or they neglecting or refusing so to do shall forfeit and pay unto the party or parties aggrieved any sum of money not exceeding one half of the debt for which the claim was filed or action brought as aforesaid, to be sued for and demanded by the person or persons damnified, in like manner as other debts are now recoverable by law of this commonwealth.

SECT. 2. That the act, entitled "An act securing to mechanics and others payment for their labour and materials, in erecting any house or other building within the city of Philadelphia, the district of Southwark and the township of the Northern Liberties," passed the first day of April one thousand eight hundred and three, be and the same is hereby repealed, excepting as it applies to liens cognizable by the said recited act previous to the passing of this act, and to actions now pending under the said recited act. To such liens and actions (and none other) it shall continue in force to the final determination of the same.

Act of 28th March 1808, 4 Sm. L. 528.

A supplement to an act, entitled "An act securing to mechanics and others payment for their labour and materials in erecting any house or other building within the city and county of Philadelphia."

SECT. 1. The act, entitled "An act securing to mechanics and others payment for their labour and materials in erecting any house or other building within the city and county of Philadelphia," passed March seventeenth, one thousand eight hundred and six, shall be, and the same is hereby declared to be in full force and operation in the borough of Erie in the county of Erie, the borough of Lancaster in the county of Lancaster, and the borough of Pittsburgh in the county of Alleghany; and mechanics and others, in the said boroughs respectively, shall have like remedy under the said act for securing the payment of their labour and materials in erecting any house or other building within the said boroughs, respectively.

SECT. 2. That in all cases of lien created by this act, or the act to which this is a supplement, or the act passed the first day of April anno Domini one thousand eight hundred and three entitled "An act securing to mechanics and others payment for their labour and materials in erecting any house or other building within the city and county of Philadelphia," the person having a claim filed agreeably to their provisions may at his election proceed to recover it, by personal action, according to the nature of the demand against the debtor, his executors or administrators, or by *scire facias* against the debtor and owner of the building, or their executors or administrators; and where the proceeding is by *scire facias*, the writ shall be served in like manner as a summons, upon the persons named therein, if they can be found within the county in which the building is situate, or are resident therein, or if they cannot be found, and are not resident in such county, by fixing a copy of the writ upon the door of the

building against which the claim is filed, and upon the return of service and failure of the defendants to appear, the court shall render judgment as in case of a summons, but if they or either of them appear, they may plead and make defence, and the like proceedings shall be had as in personal actions for the recovery of debts: *Provided*, that no judgment rendered in any such *scire facias* shall warrant the issuing an execution, except against the building or buildings upon which the lien existed as aforesaid.

Act of 21st January 1813, Pamph. L. 38.

An act extending an act entitled "An act securing to mechanics and others payment for their labour and materials in erecting any house or other building within the city and county of Philadelphia" to the borough of Beaver in the county of Beaver.

SECT. 1. The act, entitled, "An act securing to mechanics and others payment for their labour and materials in erecting any house or other building within the city and county of Philadelphia," passed March the seventeenth, one thousand eight hundred and six, with its supplement, passed the twenty-eighth of March one thousand eight hundred and eight, shall be, and the same are hereby declared to be in full force and operation in the borough of Beaver in the county of Beaver, and mechanics and others in the said borough respectively, shall have like remedy under the said acts, as though they were herein enacted at full length.

Act of 1st March 1815, 6 Sm. L. 250.

An act extending an act entitled "An act securing to mechanics and others payment for their labour and materials in erecting any house or other building within the city and county of Philadelphia" to the borough of

Marietta in the county of Lancaster, and the borough of Harrisburg in the county of Dauphin.

SECT. 1. From and after the passage hereof, the act entitled "An act securing to mechanics and others payment for their labour and materials in erecting any house or other building within the city and county of Philadelphia," passed March the seventeenth, one thousand eight hundred and six, with its supplement, passed the twenty-eighth day of March one thousand eight hundred and eight, shall be, and the same are hereby declared to be in full force and operation in the borough of Marietta in the county of Lancaster, and the borough of Harrisburg in the county of Dauphin, and mechanics and others in the said boroughs, respectively, shall have like remedy under the said acts as though they were herein enacted at full length.

Act of 22 March 1817, 6 Sm. L. 445.

An act extending the benefits of an act entitled "An act securing to mechanics and others payment for their labour and materials in erecting any house or other building in the city and county of Philadelphia" to the mechanics and others of the borough of Reading, of the borough of Westchester, and of the towns and villages adjacent to the city of Pittsburgh, and to the counties of Lancaster, Montgomery, York, Dauphin, Franklin and Lebanon.

SECT. 2. That the act entitled "An act securing to mechanics and others payment for their labour and materials in erecting any house or other building within the city and county of Philadelphia," passed March the seventeenth, one thousand eight hundred and six, and the second section of a supplement to the said act, passed March the twenty-eighth one thousand eight hundred and eight, be, and the same are hereby declared to be in force in the borough of Reading in

the county of Berks, in the borough of Westchester in the county of Chester, and in the towns of Alleghany, Birmingham, Sidneyville, Belinstown, Byardstown, Lawrenceville and Wilkinsburg in the county of Alleghany, and all other towns and villages that now are or may be laid out within ten miles of the line of the city of Pittsburgh, and in every part of the counties of Lancaster, Montgomery, York, Dauphin, Franklin and Lebanon, and mechanics and others in said places shall have like remedy under the said act and the said second section of the supplement thereto, for securing and recovering payment for their labour and materials for erecting any house or other building within the said places.

Act of 24th March 1818, 7 Sm. L. 119.

An act extending the benefits of an act entitled "An act securing to mechanics and others payment for their labour and materials in erecting any house or other building in the city and county of Philadelphia" to the mechanics and others of the counties of Cumberland, Northumberland, Columbia and Beaver, and for other purposes.

SECT. 1. That the act, entitled "An act securing to mechanics and others payment for their labour and materials in erecting any house or other building within the city and county of Philadelphia," passed March the seventeenth, one thousand eight hundred and six, and the second section of a supplement to the said act, passed March the twenty-eighth, one thousand eight hundred and eight, be and the same are hereby declared to be in force in the counties of Cumberland, Northumberland, Columbia and Beaver, and mechanics and others within the said counties shall have like remedy under the said act, and the second section of the supplement thereto, for securing and recovering payment for their labour and materials for erecting any house or building within the said counties.

SECT. 2. The several provisions of the act of assembly of this commonwealth, passed the seventeenth day of March one thousand eight hundred and six, entitled "An act securing to mechanics and others payment for their labour and materials in erecting any house or other building within the city and county of Philadelphia," and of the second section of the supplement thereto, passed the twenty-eighth day of March in the year one thousand eight hundred and eight, are hereby extended to any person or persons furnishing curbstone for the pavement of any house or building erected within the meaning of the said act, and the said person so furnishing curbstone as aforesaid shall enjoy all the benefits and advantages of the said act, and the supplement thereto, as fully and effectually as if they had been therein particularly mentioned.

Act of 7th March 1821, Pamph. L. 82.

An act extending an act, entitled "An act securing to mechanics and others payment for their labour and materials in erecting any house or other building within the city and county of Philadelphia" to the counties of Delaware, Bucks, Luzerne and Mifflin.

SECT. 1. From the passage hereof the act entitled "An act securing to mechanics and others payment for their labour and materials in erecting any house or other building within the city and county of Philadelphia," passed March seventeenth, one thousand eight hundred and six, with its supplement, passed the twenty-eighth day of March one thousand eight hundred and eight, shall be, and the same are hereby declared to be in full force and operation in the counties of Delaware, Bucks, Luzerne and Mifflin, and mechanics and others in said counties shall have like remedy under said acts, as though they were herein enacted at full length.

Act of 11th April 1825, Pamph. L. 162.

An act extending the benefits of an act entitled "An act securing to mechanics and others payment for their labour and materials in erecting any house or other building in the city and county of Philadelphia" to the mechanics and others of the counties of Schuylkill, Berks, Erie, Somerset and Venango, and for other purposes.

SECT. 1. That the act entitled "An act securing to mechanics and others payment for their labour and materials in erecting any house or other building within the city and county of Philadelphia," passed March the seventeenth, one thousand eight hundred and six, and the second section of a supplement to the said act, passed March the twenty-eighth, one thousand eight hundred and eight, be, and the same are hereby declared to be, in force in the counties of Schuylkill, Berks, Erie, Somerset and Venango, and mechanics and others in the said counties shall have like remedy under the said act, and the second section of the supplement thereto, for securing and recovering payment for their labour and materials for erecting any house or other building within the said counties.

Act of 10th April 1826, Pamph. L. 345.

An act extending the benefits of an act entitled "An act securing to mechanics and others payment for their labour and materials in erecting any house or other building in the city and county of Philadelphia" to the mechanics of the counties of Crawford, Lycoming, Centre, Clearfield and Indiana.

SECT. 1. That the act entitled "An act securing to mechanics and others payment for their labour and materials in erecting any house or other building within the city and county of Philadelphia," passed March seventeenth, one

thousand eight hundred and six, and the second section of the supplement to the said act, passed March twenty-eighth, one thousand eight hundred and eight, be, and the same are hereby declared to be, in force in the counties of Crawford, Lycoming, Centre, Clearfield and Indiana, and the mechanics and others in said counties shall have like remedy under the said act, and the said second section of the supplement thereto, for securing and recovering payment for their labour and materials for erecting any house or other building within said counties.

Act of 16th April 1827, Pamph. Laws 446.

A supplement to the act entitled "An act securing to mechanics and others payment for their labour and materials in erecting any house or other building within the city and county of Philadelphia," and for other purposes.

SECT. 1. From the passage hereof the act entitled "An act securing to mechanics and others payment for their labour and materials in erecting any house or other building within the city and county of Philadelphia," passed the seventeenth of March one thousand eight hundred and six, with its supplement passed the twenty-eighth day of March one thousand eight hundred and eight, shall be, and the same is hereby declared to be, in full force and operation in the county of Union, and mechanics and others in said county shall have like remedy under said acts, as though they were herein enacted at full length.

Act of 4th February 1830, Pamph. L. 37.

An act extending an act entitled "An act securing to mechanics and others payment for their labour and materials in erecting any house or other building within the

city and county of Philadelphia," to the borough of Easton in Northampton county.

SECT. 1. From and after the passage of this act the act entitled "An act securing to mechanics and others payment for their labour and materials in erecting any house or other building within the city and county of Philadelphia," passed the seventeenth day of March one thousand eight hundred and six, with its supplement, passed the twenty-eighth day of March one thousand eight hundred and eight, shall be, and the same are hereby declared to be, in full force and operation in the borough of Easton in the county of Northampton, and mechanics and others in the said borough shall have like remedy under said acts as though they were herein enacted at full length.

Act of 28th January 1831, Pamph. L. 36.

An act extending the provisions of the lien laws to the plumbers of the city and county of Philadelphia.

SECT. 1. From and after the passing of this act the several provisions of the act of the seventeenth of March, one thousand eight hundred and six, entitled "An act securing to mechanics and others payment for their labour and materials in erecting any house or other building within the city and county of Philadelphia," and the supplements thereto, be and they are hereby extended to plumbers, for all work by them done or materials by them found and provided for or in the erecting and constructing of all and every dwellinghouse or other building, and the hydrants and pipes appurtenant thereto, hereafter constructed and erected within the city and county of Philadelphia.

Act of 30th March 1831, Pamph. L. 239.

An act extending an act entitled "An act securing to mechanics and others payment for their labour and materials in erecting any house or other building within the city and county of Philadelphia" to the counties of Bedford, Cambria, Tioga and Armstrong.

SECT. 1. From and after the passage of this act the act entitled "An act securing to mechanics and others payment for their labour and materials in erecting any house or other building within the city and county of Philadelphia," passed the seventeenth day of March one thousand eight hundred and six, with the supplement thereto, passed the twenty-eighth day of March one thousand eight hundred and eight, shall be, and the same are hereby declared to be, in full force and operation in the counties of Bedford, Cambria, Tioga and Armstrong, and mechanics and others in the said counties of Bedford, Cambria, Tioga and Armstrong shall have like remedy under the said acts as though they were herein enacted at full length.

Act of 30th March 1831, Pamph. L. 242.

An act relative to the liens of mechanics and others.

SECT. 1. From and after the passage of this act all claims filed or entered in pursuance of the act to which this is a further supplement, within six months after performing the work or furnishing the materials, shall continue to bind the buildings or dwellinghouses against which the same are entered, for the term of five years from the day of filing the same; and no claim, so as aforesaid filed, shall bind any building or dwellinghouse for a longer period than five years from the day of filing the same, unless within that time the person who has filed the same, his executors, administrators or assigns, shall issue a *scire facias* thereon.

SECT. 2. In all cases where any claim or claims has or have been filed or shall hereafter be filed, the legal or equitable owner or owners of the buildings or dwellinghouses bound thereby, or any person interested, may apply to the court, on the proper docket of which the same is or are filed, by petition, setting forth the facts; which said court shall order an issue to be formed and tried, to ascertain if any, and what sum is due upon such claim or claims, and shall have power to make orders in relation to such issue, and the mode of trying the same, and the costs thereof, as fully as any court of equity might or could do in relation to any issue ordered by such courts of equity.

SECT. 3. In all cases where the amount of any claim has been paid and satisfied, and no satisfaction entered on the record thereof, the legal or equitable owner or owners of the building or dwellinghouse or dwellinghouses, bound by the same, may, in order to have satisfaction entered on the record, proceed against the person filing such claim, his executors, administrators and assigns, in the same manner, and shall have the rights and remedies provided for defendants and purchasers of real property by the fourteenth section of the act of assembly of this commonwealth entitled "An act to establish the judicial courts of this commonwealth, in conformity to the alterations and amendments in the constitution," passed the thirteenth day of April one thousand seven hundred and ninety-one.

And whereas, it sometimes happens that several houses and other buildings, adjoining each other, are erected by the same owner, so that it is impossible for the person who has found and provided materials for the same to specify in his claim filed the particular house or other building for which the several items of his demand were so found and provided: *And whereas*, doubts have arisen as to the true construction in such cases of the laws of this commonwealth: Therefore,

SECT. 4. It shall and may be lawful, in every such case, for the person so finding and providing materials as aforesaid for two or more adjoining houses, and other buildings built by the same person, owner of the same, and debtor for

the said materials, to file with his claim thereof an apportionment of the amount of the same among the said houses and other buildings: and each of the said houses and other buildings shall be subject to the payment of its said apportioned share of the debt contracted, in the same manner as is provided by law in other cases.

Act of 7th May 1832, Pamph. L. 539.

An act extending "An act securing to mechanics and others payment for their labour and materials in erecting any house or other building within the city and county of Philadelphia" to the counties of Chester, Butler and Perry.

SECT. 1. From and after the passage of this act, the act entitled "An act securing to mechanics and others payment for their labour and materials in erecting any house or other building within the city and county of Philadelphia," passed the seventeenth day of March one thousand eight hundred and six, with the supplements thereto, passed the twenty-eighth day of March one thousand eight hundred and eight, and the thirtieth of March one thousand eight hundred and thirty-one, shall be, and the same are hereby declared to be, in full force and operation in the counties of Chester (Butler) and Perry, and mechanics and others in the said counties of Chester, Butler and Perry shall have like remedy under the said acts as though they were herein enacted at full length.

Act of 11th April 1835, Pamph. L. 190.

An act extending the mechanic's lien law to the counties of Warren and Juniata, and for other purposes.

SECT. 1. The provisions of the act passed on the seventeenth of March, one thousand eight hundred and six, enti-

tled "An act securing to mechanics and others payment for their labour and materials in erecting any house or other building within the city and county of Philadelphia," and of the supplement thereto, passed on the twenty-eighth of March one thousand eight hundred and eight, shall be and the same are hereby extended to and declared to be in full force and operation in the counties of Warren and Juniata, and mechanics and others in the said counties of Warren and Juniata shall have like remedy under the said acts as though they were herein enacted at full length and applied to the said county of Warren.

Act of 13th April 1835, Pamph. L. 213.

An act to extend the laws relating to the mechanic's liens to the counties of Washington, Huntingdon, Mercer, Beaver and Alleghany.

SECT. 1. From and after the passage of this act, the act entitled "An act securing to mechanics and others payment for their labour and materials in erecting any house or other building within the city and county of Philadelphia," passed the seventeenth of March one thousand eight hundred and six, and the supplements thereto, passed the twenty-eighth of March one thousand eight hundred and eight, and the thirtieth of March one thousand eight hundred and thirty-one, shall be and the same are hereby extended to and in full force and operation in the counties of Washington, Huntingdon, Mercer, Beaver and Alleghany, and mechanics and others shall have like remedies in the said counties under the said acts as though the provisions thereof had been herein enacted at full length.

Act of 1st April 1836, Pamph. L. 400.

An act to authorize the opening and extension of Robinson and Leacock streets, and Rebecca street, in the borough of Alleghany, and the opening of a sixty feet street between out lots numbered thirty-nine and forty, in said borough, and for other purposes.

SECT. 6. The act, entitled "An act securing to mechanics and others payment for their labour and materials in erecting any house or building within the city and county of Philadelphia," passed the seventeenth of March, one thousand eight hundred and six, and the supplements thereto, passed the twenty-eighth of March one thousand eight hundred and eight, and the thirtieth of March one thousand eight hundred and thirty-one, be and they are hereby extended to Susquehannah county.

Act of 16th June 1836, Pamph. L. 695.

An act relating to the lien of mechanics and others upon buildings.

SECT. 1. Every building erected within the several counties of this commonwealth to which the act entitled "An act securing to mechanics and others payment for their labour and materials in erecting any house or other building within the city and county of Philadelphia," passed the seventeenth of March one thousand eight hundred and six, and the several supplements thereto, now extends, shall be subject to a lien for the payment of all debts contracted for work done or materials furnished for or about the erection or construction of the same.

SECT. 2. The lien of such debt shall extend to the ground covered by such building, and to so much other ground immediately adjacent thereto, and belonging in like manner to the owner of such building, as may be necessary for the or-

dinary and useful purposes of such building, the quantity and boundaries whereof shall be determined as follows:

SECT. 3. It shall be the duty of the prothonotary of the court of common pleas of every county to which the provisions of this act extend, and the prothonotary of the district court of the city and county of Philadelphia, respectively, and of the city and county of Lancaster, the district court of Alleghany county, to procure and keep a book or docket, which shall be called the "Mechanic's Lien Docket," in which he shall cause to be entered and recorded all descriptions or designations of lots or pieces of ground, as hereinafter mentioned, and all claims that may be filed by virtue of this act, together with the day of filing the same; and he shall cause the names, as well of the owner of the lot or piece of ground as of the contractor, architect or builder, if such be named, and of the person claiming any lien under this act, to be alphabetically indexed therein.

SECT. 4. It shall be lawful for the owner of any lot or piece of ground, who may be desirous of erecting or of contracting with any other person for the erection of any building as aforesaid, to declare or define in writing the boundaries of the lot or curtilage appurtenant to such building, previously to the commencement thereof, and cause the same to be entered in a book aforesaid; and such designation of boundaries, so made and entered upon record, shall be obligatory upon all persons concerned.

SECT. 5. In default of such designation of boundaries previously to the commencement of any building, it shall be lawful for the owner of such lot or piece of ground, or for any person having a lien on the same, by mortgage, judgment or otherwise, or entitled to a lien by virtue of this act, to apply by petition, in writing, to the proper court to appoint competent and skilful persons as commissioners to designate the boundaries aforesaid.

SECT. 6. It shall be the duty of the court to whom application shall be made as aforesaid, after reasonable notice given to all parties interested, to appoint such competent persons commissioners as aforesaid, as all the parties inte-

rested shall nominate; but if the parties cannot agree upon a nomination, it shall be lawful for the court to appoint such competent persons for that purpose as they shall think proper.

SECT. 7. It shall be the duty of the commissioners so appointed to examine the building, or place at which such building is being erected, and to make a report to the court, in pursuance of the order to them directed; and in such report they shall sufficiently designate and describe by metes and bounds, with their courses and distances, and by a draft if necessary, the limits and extent of ground necessary for the convenient use of such building for the purposes for which it is designed; and such report shall be entered at length upon the record book aforesaid, and if approved by the court, shall be conclusive upon all persons concerned.

SECT. 8. If execution shall be awarded for the levy and sale of any lot or piece of ground, upon which a building shall be erected as aforesaid, before the boundaries of the lot or curtilage which ought to be appurtenant thereto shall be designated, it shall be lawful for the court, upon application, to stay such execution until such designation shall be made; and thereupon order the sale to proceed in such manner, and for such part or parts, and in such parcels, as shall be most convenient for the administration of equity among all persons interested.

SECT. 9. If the building against which any claim shall be filed as aforesaid, or any part of the ground adjacent thereto, shall be sold by virtue of an execution, upon any mortgage or judgment, before the extent of the lien of the claimant shall be ascertained as aforesaid, the court out of which such execution shall have issued shall have power to determine the rights of the respective parties, and the apportionment or appropriation of all liens as aforesaid; and for that purpose may appoint an auditor to inquire into and report the facts, and may decree distribution of the proceeds accordingly, or upon the application of any of the parties may direct an issue for the determination of disputed facts.

SECT. 10. The lien for work and materials as aforesaid

shall be preferred to every other lien or incumbrance which attached upon such building and ground, or either of them, subsequently to the commencement of such building.

SECT. 11. Every person entitled to such lien shall file a claim or statement of his demand in the office of the prothonotary of the court of common pleas of the county in which the building may be situate.

SECT. 12. Every claim as aforesaid must be set forth:

First, The names of the party claimant, and of the owner or reputed owner of the building, and also of the contractor, architect or builder, where the contract of the claimant was made with such contractor, architect or builder.

Second, The amount or sum claimed to be due, and the nature or kind of the work done, or the kind and amount of materials furnished, and the time when the materials were furnished or the work was done, as the case may be.

Third, The locality of the building, and the size and number of the stories of the same, or such other matters of description as shall be sufficient to identify the same.

SECT. 13. In every case in which one claim for materials shall be filed by the person preferring the same against two or more buildings owned by the same person, the person filing such joint claim shall, at the same time, designate the amount which he claims to be due to him on each of such buildings, otherwise such claim shall be postponed to other lien creditors; and the lien of such claimant shall not extend beyond the amount so designated as against other creditors having liens by judgment, mortgage or otherwise.

SECT. 14. Every such debt shall be a lien as aforesaid until the expiration of six months after the work shall have been finished or materials furnished, although no claim shall have been filed therefor; but such lien shall not continue longer than the said period of six months, unless a claim be filed as aforesaid at or before the expiration of the same period.

SECT. 15. The proceedings to recover the amount of any claim as aforesaid shall be by a writ of *scire facias*, in the following form: viz.

County, *ss.*

The commonwealth of Pennsylvania to the sheriff of said county, greeting:

Whereas hath filed a claim in our (court) for the county of , against for the sum of , for (work done or materials furnished, as the case may be) to (or for) a certain building: to wit (describing it as in the claim): *And whereas*, it is alleged that the said sum still remains due and unpaid to the said ; now we command you that you make known to the said , and to all such persons as may hold or occupy the said building, that they be and appear before the judges of our said court at a court of , to be held at , on the of next, to show, if any thing they know or have to say, why the said sum of should not be levied of the said building, to the use of the said , according to the form and effect of the act of assembly in such case made and provided, if to them it shall seem expedient, and have you then and there this writ.

Witness.

SECT. 16. *Provided*, That no such *scire facias* shall in any case be issued within fifteen days previous to the return day of the next term.

SECT. 17. The writ of *scire facias* aforesaid shall be served in the same manner as a summons, upon the defendant therein named, if he can be found within the county, and a copy thereof shall also be left with some person residing in the building, if occupied as a place of residence; but if not so occupied, it shall be the duty of the sheriff to affix a copy of such writ upon the door or other front part of such building.

SECT. 18. It shall also be the duty of the sheriff to whom any such writ of *scire facias* may be directed, to give notice thereof to all other claimants and persons interested, by advertisements in two daily newspapers published in his county, as the case may be, at least ten days before the return day of the writ, in each county where such papers are published,

but when daily papers are not so published, then in two weekly newspapers, if so many are published therein, or if but one weekly newspaper is published in such county, in such newspaper, or if no paper is published in such county, in a paper published nearest thereto, for four successive weeks before the return day thereof.

SECT. 19. Upon the return of such writ, it shall be lawful for any other person, having filed a claim as aforesaid, to cause to be entered on the record of the same suit, a suggestion, setting forth the amount and nature of his demand, and thereupon he may have a rule upon the defendant to appear and plead thereto, as in other actions.

SECT. 20. If the defendant shall appear and plead to such suggestion, and issue either in fact or law be joined upon any plea, such particular issue shall be tried and determined as in other cases: if the defendant shall not plead to such suggestion, after due notice, judgment shall be entered for the claimant filing the same, and the amount of the claim shall be ascertained as in other cases.

SECT. 21. The execution for every such judgment shall be by a writ of *levari facias*, in the following form:

County, *ss.*

The commonwealth of Pennsylvania to the sheriff of said county, greeting:

We command you, that without any other writ from us, of the following described building and lot of ground of A. B., to wit (describing the same according to the record), in your bailiwick, you cause to be levied, as well a certain debt of , which C. D., lately in our court of common pleas for the county aforesaid, by the consideration of the said court, recovered of the said A. B., to be levied of the said building and lot of ground, as also the interest thereon from the day of , A. D. ; also, the further sum of , which E. F. lately, in our said court for the county aforesaid, by the consideration thereof, recovered of the said A. B. to be levied of the said building and lot of ground, as also the interest thereon from the day of , A. D. , amounting in the whole to the sum of , and

also the sum of , for the costs which accrued thereon, according to the form and effect of an act of assembly of the commonwealth of Pennsylvania in such case made and provided, and have you these moneys before our judges at , at our county court of common pleas, there to be held on the day of next, to render unto the said C. D. for his debt, interest and costs aforesaid, and have you then there this writ, &c.

SECT. 22. *Provided*, That if the proceeds of such building and ground as aforesaid shall not be sufficient to pay the full amount of all debts due as aforesaid, for work done and materials furnished, after deducting therefrom any prior liens upon the same, then such debts shall be averaged, and the creditors aforesaid shall be paid in proportion to their respective demands.

SECT. 23. In every case in which any claim shall be filed against any building as aforesaid, and no *scire facias* shall have issued thereon, it shall be lawful for the owner of such building, or any person interested therein, to apply by petition to the court in which such claim shall be filed, setting forth the facts, whereupon, such court may grant a rule upon the party claimant, and others interested, to appear in court at a time to be fixed for such purpose, and on the return of such rule may proceed in like manner as if a *scire facias* had been issued by such claimant, and had been duly served and returned.

SECT. 24. The lien of every such debt, for which a claim shall have been filed as aforesaid, shall expire at the end of five years from the day on which such claim shall have been filed, unless the same shall be revived by *scire facias*, in the manner provided by law in the case of judgments, in which case, such lien shall continue in like manner, for another period of five years, and so from one such period to another, unless such lien be satisfied, or the same be extinguished by a sheriff's sale, or otherwise, according to law.

SECT. 25. In every case in which the amount of any claim as aforesaid shall be paid or otherwise satisfied, it shall be the duty of the claimant, or his legal representative, at

the request of the owner of the building, or of any other person interested therein, and on payment of the costs, to enter satisfaction on the record of such claim in the office of the prothonotary of the court in which such claim shall have been entered, which shall for ever thereafter discharge and release the same.

SECT. 26. If any person who shall have received satisfaction as aforesaid, shall neglect or refuse to enter satisfaction of such claim, as aforesaid, within sixty days after request, and payment of the costs of suit, as aforesaid, he shall forfeit and pay to the party aggrieved any sum not exceeding one half of the amount of such claim, to be recovered as debts of a like amount are recoverable.

SECT. 27. *Provided*, That nothing in this act contained shall be construed to impair, or otherwise affect the right of any person to whom any debt may be due for work done, or materials furnished, to maintain any personal action against the owner of the building, or any other person liable therefor, to recover the amount of such debt: *Provided further*, That nothing in this act contained shall be construed to affect the relative jurisdiction of the court of common pleas, and the district court of the city and county of Philadelphia, which shall remain as heretofore.

SECT. 28. The several provisions of this act are hereby declared to be extended to the county of Lehigh.

SECT. 29. The lien hereinbefore given is hereby declared to extend to plumbers, and to persons furnishing curbstone for the pavement of any building as aforesaid, within the city and county of Philadelphia.

SECT. 30. This act shall take effect from and after the first day of September next, and so much of any law as is altered by this act is hereby repealed from that period.

Act of 4th April 1837, Pamph. L. 298.

An act further to incorporate the district of the Northern Liberties, in the county of Philadelphia, and for other purposes.

SECT. 11. That such provisions of the several acts of assembly of this commonwealth which have been altered or supplied by the following acts, viz., "An act relating to the commencement of actions;" "An act relating to reference and arbitration;" "An act relating to assignees for the benefit of creditors and other trustees;" "An act relating to the attachment of vessels;" "An act relative to the organization of courts of justice;" "An act relative to bonds, with penalties and official bonds;" "An act relating to counties and townships, and county and township officers;" "An act relating to county rates and levies, and township rates and levies;" "An act relative to the jurisdiction and powers of the courts;" "An act relating to domestic attachments;" "An act relating to executions;" "An act relating to insolvent debtors;" "An act relating to lunatics and habitual drunkards;" "*An act relating to the lien of mechanics and others upon buildings;*" "An act relating to orphan's courts;" "An act relating to the support and employment of the poor;" "An act relating to registers and register's courts;" "An act relating to roads, highways and bridges," be and continue in force so far as may be necessary to carry into full effect any proceedings not consummated at the times when the several acts hereinbefore enumerated came into operation; and all proceedings since the passing of the said specially enumerated acts which have taken place in conformity with prior existing laws shall be deemed and taken to be good and valid to all intents and purposes.

Act of 16th April 1838, Pamph. L. 626.

An act granting certain powers to the authorities of the cities of Lancaster and Philadelphia, and for other purposes.

SECT. 19. That from the passage hereof the act entitled "An act securing to mechanics and others payment for their labour and materials in erecting any house or other building within the city of Philadelphia," passed the seventeenth day of March one thousand eight hundred and six, with its supplement, passed the twentieth(1) day of March one thousand eight hundred and eight, shall be, and the same is hereby declared to be, in full force and operation in the county of Bradford, and mechanics and others in said county shall have like remedy under said acts as though they were herein enacted at full length.

SECT. 34. That the several provisions of the act of sixteenth of June one thousand eight hundred and thirty-six entitled "An act relating to the lien of mechanics and others upon buildings" are extended to wharf-builders, and all concerned in the making or constructing of the same.

(1) This should be the *twenty-eighth* day of March.

INDEX.

Action, Personal, 1. Against whom it lies, 61, 62, 63.
2. Effect of it, 64.
Action on the case should have been special, 59, 63.
Acts of Assembly,
Of 28th May 1715, 45, 46.
Of 1st April 1803, 13, 14, 18, 26, 37, 43, 59.
Of 17th March 1806, 14, 19, 21, 22, 23, 26, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 43, 44, 45, 46, 53, 57, 60, 64, 67, 73, 74.
Of 28th March 1808, 14, 27, 28, 33, 36, 38, 40, 43, 60, 61, 62, 63, 64, 65, 66, 67, 68, 70, 71.
Of 22d March 1817, 35.
Of 24th March 1818, 33, 35.
Of 7th March 1821, 35.
Of 11th April 1825, 35.
Of 10th April 1826, 35.
Of 16th April 1827, 35.
Of 4th February 1830, 36.
Of 28th January 1831, 33.
Of 30th March 1831, 35.
Of 30th March 1831, 15, 22, 26, 27, 41, 42, 43, 65, 66.
Of 7th May 1832, 35.
Of 11th April 1835, 35.
Of 13th April 1835, 35.
Of 3d February 1834, 51.
Of 1st April 1836, 35.
Of 16th June 1836, 15, 22, 26, 27, 28, 34, 35, 36, 38, 42, 43, 44, 58, 65, 66, 67, 68, 72, 73.
Of 16th April 1838, 34, 36, 67.
Alleghany county, 35.
Alteration, 1. Of building (see Building, 1).
2. Of ownership, 23, 24, 25.
Apportionment of claim, 40, 42.
Appropriation, 1. Where not allowed against a purchaser, 30, 51.
2. Where presumed in favour of lien creditor, 51.
Armstrong county, 35.
Association, 52.
Assumpsit, 1. Must be brought against the original debtor, 62.
2. Evidence in, 71.

Beaver county, 35.
Bedford county, 35.
Berks county, 35.
Blacksmiths, 32.
Bradford county, 36.
Not embraced by act of 1836, 67.
Bricklayers, 32.
Bucks county, 35.
Building, 1. Alteration of, 24, 25, 26.
2. Commencement of, 25.
3. Repairs of, 26.
Cambria county, 35.
Carpenters, 32.
Cellar, 26.
Centre county, 35.
Chester county, 35.
Claim, 1. Object of filing, 37.
2. Where to be filed, 37.
3. When to be filed, 37.
4. Effect of filing, 37, 45, 63.
5. What it must set forth, 38.
6. Manner of filing, 38.
7. When joint claim is inadmissible, 39, 40, 41.
8. When joint claim is admissible, 40.
9. Effect of not filing, 43.
Clearfield county, 35.
Columbia county, 35.
Crawford county, 35.
Creditor, agreeing to be paid in lumber, 29.
Cumberland county, 35.
Curbstone, 33, 34.
Dauphin county, 35.
Delaware county, 35.
Designation, 1. Where requisite, 40, 43.
2. Who have the privilege of, 42.
3. Effect of the want of, 43.
Diggers, 34.
Easton, borough of, 36.
Erie county, 35.
Evidence, 1. In a *scire facias*, 70.
2. In assumpsit (see Assumpsit, 2).
Execution, mode of enforcing, 73.
Filing (see Claim).
Franklin county, 35.
Glaziers, 32.
Huntingdon county, 35.
Indiana county, 35.
Ironmongers, 32.
Journeymen have no lien, 33.
Judgment obtained by Material Man,
1. Effect of, 48, 49.
2. Former, where evidence, 70.

Juniata county, 35.
Kensington, District of, 51.
Lancaster county, 35.
Lawrenceville, 36.
Lebanon county, 36.
Lehigh county, 36.
Lien of Mechanics and Material Men,
1. When it exists, 13, 14, 16, 17, 18, 59.
2. First act of assembly creating it, 13, 59.
3. Extended by act of 1806, 14.
4. How made indefinite, 14, 15, 27, 45.
5. Time it existed without act of the party, 14, 15, 27.
6. Time extended by act of the party, 15, 27, 28.
7. How affected by time of furnishing materials, 17.
8. How affected by place of furnishing materials, 17.
9. Not created by repairing a house, 17, 18.
10. Must correspond with claim filed, 20.
11. Will bind remainder men and reversioners, 21.
12. What is embraced by it, 19, 20, 21, 22, 23.
13. Time it commences, 23.
14. What determines it, 28, 29, 45.
15. Who are entitled to it, 33.
16. Where postponed to a judgment, 50.
17. Where preferred to a judgment, 49, 50.
18. Not extinguished by a judgment, 48.
19. Nor by a bond, 49.
20. Nor by acceptance of a note, 49.
21. Where postponed to lien of a vendor, 51.
22. Where postponed to an assessment, 51.
23. Where postponed to a rent charge, 57.
24. Where preferred to a rent charge, 57.
Lime merchants, 32.
Lot, embraced by lien on building erected on it, 20, 22.
Lumber merchants, 32.
Luzerne county, 35.
Lycoming county, 35.
Masons, 32.
Materials must be expressly furnished for a building, 16.
Material men, 32, 33, 52.
Mercer county, 35.
Mifflin county, 35.
Millstones, 21.
Montgomery county, 35.
Mortgage, 1. Lien of, 25.
2. Took effect from date, 45.
3. Where postponed to lien of mechanics and material men, 46, 47.
4. Where preferred to lien of mechanics and material men, 53, 55, 56.
5. On a lot, embraces subsequent erections, 53, 54.
6. Sale under, effect of (see Sale, 6).
Northampton county, 36.

Northern Liberties, 13.
Northumberland county, 35.
Painters, 32.
Paper hangers } have no lien under act of 1806, 34.
Paper stainers }
Perry county, 35.
Philadelphia, 13, 33.
Philadelphia county, 33, 35.
Pittsburgh, 36.
Plasterers, 32.
Plea, 1. Of payment, effect of, 67.
2. Of former judgment, effect of, 67, 68.
Plumbers, 33, 34.
Purchaser at sale, 47.
Repairs (see Building, 3).
Sale, 1. Within two years, 29, 45.
2. Under mechanic's lien, effect of, 30, 47, 48.
3. Under a judgment, effect of, 31, 32.
4. Proceeds of, how divided, 31.
5. Application of proceeds arising from, 40, 73, 75.
6. Under a mortgage, effect of, 56.
7. Under a mortgage, when set aside, 57.
Sawmill, 21.
Scenes, 21.
Schuylkill county, 35.
Scire Facias, 1. When requisite to extend mechanic's liens, 15, 27, 28.
2. Who are to be joined in it, 38, 60, 64, 65, 66.
3. Where may be maintained, 42.
4. Lessee may be made party to it, 64.
5. Omission of party plaintiff to it, 65, 68.
6. When to be issued, 66.
Set off, 69.
Somerset county, 35.
Southwark, 13.
Steam engine, 21.
Stonecutters, 32.
Stone work, 19.
Suggestion, 68, 69.
Susquehannah county, 35.
Tenant for life, 21.
Theatre, 21.
Tioga county, 35.
Union county, 35.
Venango county, 35.
Warren county, 35.
Washington county, 35.
Wharf builders, 34.
York county, 35.

THE END.

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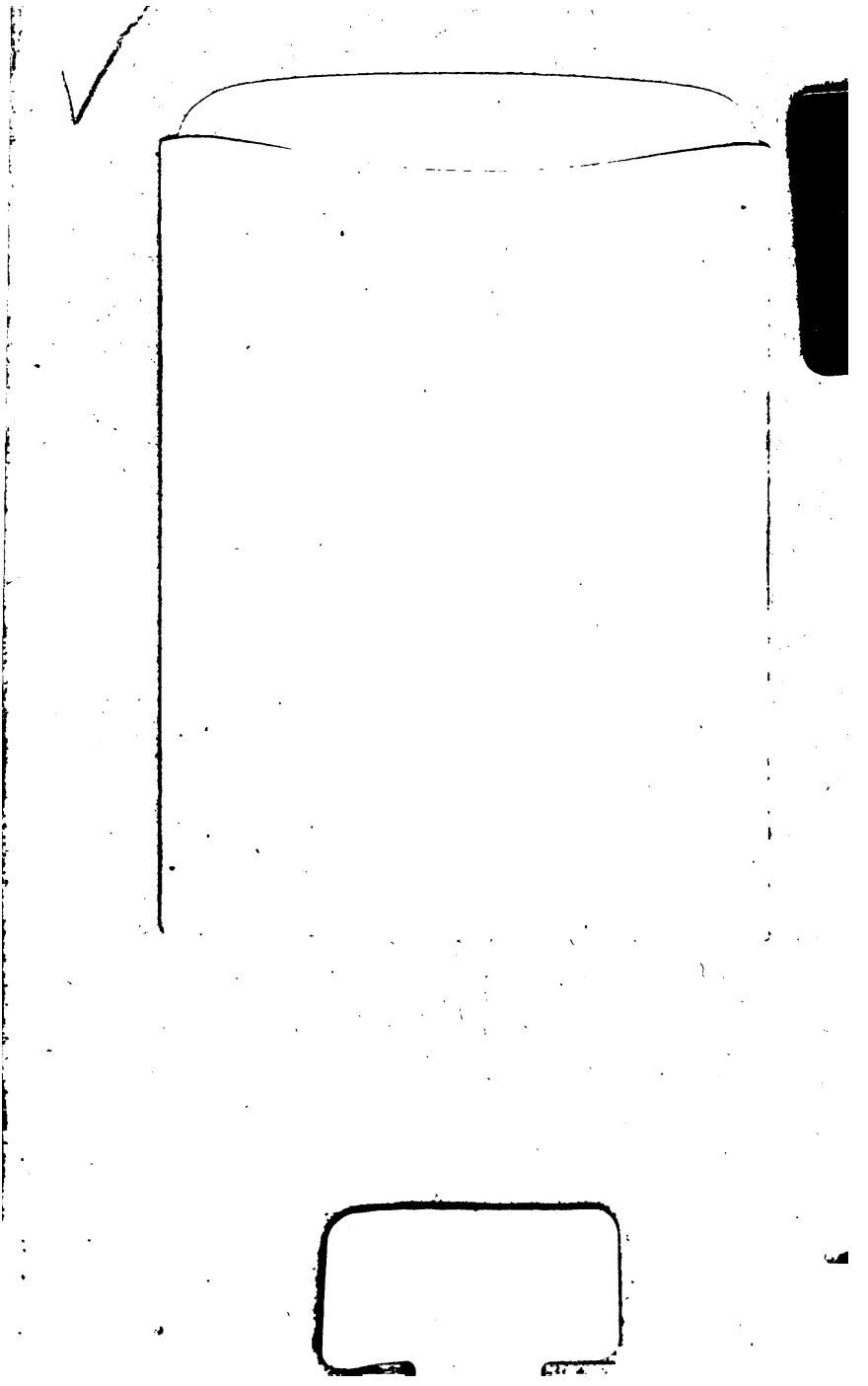
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